



United States of America v. Apple, Inc.
Opening Statement

June 3, 2013



linked nature of the web were sacrificed. Apps were not as easily linked or searchable. Because the iPad allowed the use of both apps and web browsing, it was not at war with the web model. But it did offer an alternative, for both the consumers and the creators of content.

Publishing and Journalism

With the iPod, Jobs had transformed the music business. With the iPad and its App Store, he began to transform all media, from publishing to journalism to television and movies.

Books were an obvious target, since Amazon's Kindle had shown there was an appetite for electronic books. So Apple created an iBooks Store, which sold electronic books the way the iTunes Store sold songs. There was, however, a slight difference in the business model. For the iTunes Store, Jobs had insisted that all songs be sold at one inexpensive price, initially 99 cents. Amazon's Jeff Bezos had tried to take a similar approach with ebooks, insisting on selling them for at most \$9.99. Jobs came in and offered publishers what he had refused to offer record companies: They could set any price they wanted for their wares in the iBooks Store, and Apple would take 30%. Initially that meant prices were higher than on Amazon. Why would people pay Apple more? "That won't be the case," Jobs answered, when Walt Mossberg asked him that question at the iPad launch event. "The price will be the same." He was right.

The day after the iPad launch, Jobs described to me his thinking on books:

Amazon screwed it up. It paid the wholesale price for some books, but started selling them below cost at \$9.99. The publishers hated that—they thought it would trash their ability to sell hardcover books at \$28. So before Apple even got on the scene, some booksellers were starting to withhold books from Amazon. So we told the publishers, "We'll go to the agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway." But we also asked for a guarantee that if anybody else is selling the books

"Amazon screwed it up. It paid the wholesale price for some books, but started selling them below cost at \$9.99. The publishers hated that...."

"So we told the publishers, 'We'll go to the agency model, where you set the price, and we get our 30%, and yes, the customer pays a little more, but that's what you want anyway.'"



DX-086

Subject: Books - Publisher Update
Date: Tue, 15 Dec 2009 21:29:33 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Bcc: Kevin Smit <ksmit@apple.com>, Keith Moorer <kmoorer@apple.com>
Message-ID: <E7050FBB-0C9E-463D-8B64-4356996546DB@apple.com>

Steve,

Here is what I
will account for
these deals don't
proposal from

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- digital sales
- books basical
- market (18 mo
- each of these
- most book ne
- marketshare
- Random House
- Penguin 11.9
- Harper 9.8
- Simon & Sch
- Hachette 6.9

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- previews is u
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Confidential

- redownloads are fine
- digital wholesale prices are the same as the physical product - roughly 50% of suggested retail price
- asked about and are interested in doing bundles, especially for series
- interested in including extra material (video, audio, images) as part of deluxe editions
- open to promotional opportunities to introduce ebooks
- pre-order up to 6 months ahead of book launch
- very happy with level of sales reporting we can provide, which is better than Amazon

- Amazon is definitely not liked much because of selling below cost for NYT Best Sellers and not being upfront on their deal with them (e.g. didn't know about text to speech)
- Amazon customer mostly all over 45 years old
- Google was either not liked or indifferent; no one views them as a serious ebook commerce partner; with new settlement being proposed any book in print must opt-in and Google can only show 20% of the content so it is more of a preview

- everyone is interested in ad campaign that is co-funded; biggest issue is they have very small generic marketing funds since they can't charge it back to an author; will think more about the implications but want to do it

Here is some publisher specific data -

Hachette

- Unhappy with \$9.99 price point, one of three major publishers to announce its intention to hold back ebooks at time of hardcover release (up to four months). Other two publishers are Simon & Schuster and HarperCollins
- Very open to the idea of window of exclusivity for higher priced new release content
- Looking for to propose price points
- 3k titles available as eBooks
- very much focused on bestsellers
- their content is delivered by third-party company based on Austin (also shared by two other major publishers)

RandomHouse

- 12k titles available as eBooks; adding another 10k in the first half of 2010
- doesn't like the \$9.99 price point, but doesn't want or support windowing. hasn't said so publicly
- very aggressive approach to what eBook rights they believe they hold, claiming worldwide rights for 55% of their catalog
- new contracts pay authors the same for physical or digital (30% of revenue); old contracts pay 50% of revenue for digital

Penguin

- 10k titles available as ebooks
- not happy about \$9.99 price point, but hasn't announced a position publicly; clear from the CEO, though, that they don't view a \$9.99 eBook as sustainable model competing with much higher priced physical books
- 20% of their sales come from new releases with wholesale prices above \$10

Confidential

APLEBOOK00434144

"Hachette

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* * *

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Message-ID: <E7050FBB-0C9E-463D-8B64-4356996546DB@apple.com>

Steve,

Here is what I have found after meeting with 3 publishers today. Tomorrow, we see 3 more. This will account for over 60+% of the book sales. Nothing scared me or made me feel like we can't get these deals done right away. **Clearly, the biggest issue is new release pricing and they want a proposal from us.** Everyone was ecstatic to see Apple and what it could mean for their industry.

Many of the answers were the same from every publishers. Below are those -

- worldwide consumer book market - \$40 billion (North America is \$25.1 billion)
- market expected to grow 2.7% annually over the next 3 years
- In the US, consumer books are 42% of the market, education/technical is 58%
- digital sales was 2% last year and will be 4.2% this year - includes ebooks and audio downloads
- books basically have three tiers - hardcover (0-12 months), trade paperback (12 month on), mass market (18 months on)
- each of these tiers has many price points
- most book never go mass market and stay trade
- marketshare

Random House 16.4%

Penguin 11.9

Haper 9.8

Simon & Sch 8.7

Hachette 6.9

- available in ePub format (original book are in InDesign)
- rich metadata is available (author, bio, date written, genre, etc)
- covers and illustrations are in hi-res color
- no ratings are available on books
- previews is usually at least the entire first chapter
- open to providing full search in the book with book preview ala what Amazon does for physical
- many categories currently underserved because of b&w screens - cookbooks, travel, kids, etc
- no one likes text to speech because of audiobooks and have disabled it on Amazon
- no one likes the book lending on Nook; one publisher is participating with a few titles (too limited anyways)
- generally North American rights held by US publishers. UK publishers control UK, Australia, India. Europe is mostly an open territory, with US and UK publishers both able to sell there
- all of them have some iPhone book apps but all agree that it should be in a book store
- their current DRM is 5 device limit but as we explained how FairPlay worked everyone was fine with it; I don't foresee this being an issue as our explanation is rock solid

Exhibit 13
Cue
03/12/13

K. Schroeder
KSF ENR CEE

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APLEBOOK00434143

“Clearly, the biggest issue is new release pricing and they want a proposal from us.”



“[A]ll resellers of new titles need to be in agency model....”

“...realistic pricing....”

“We think these agency terms accomplishes all the goals we both have.”



PX-0521 and PX-0174

Plaintiff Exhibit
US v Apple
12-cv-00456
PX-0521

From: "Thomas, Maja" <Maja.Thomas@hbgusa.com>
Sent: Tuesday, January 19, 2010 03:36:51 PM
To: "Young, David" <David.Young@hbgusa.com>
Cc: "Baule, Deirdre" <Deirdre.Baule@hbgusa.com>; "Maciag, Tom" <Tom.Maciag@hbgusa.com>; "Kinzer, Mitchell" <Mitchell.Kinzer@hbgusa.com>; "Ross, Carol" <Carol.Ross@hbgusa.com>; "Solomon, Elise" <Elise.Solomon@hbgusa.com>; "DeYoung, Neil" <Neil.DeYoung@hbgusa.com>; "Michaels, Kenneth" <Kenneth.Michaels@hbgusa.com>
Subject: Apple

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Eddy Cue reiterated their goals to us again today.

-They want to represent a material part of our ebook business: 10-20% in the first year, or they aren't interested in making the investment to build the store.

-They are not willing to open an ebook store that is not price competitive, or where they'd need to sell at a loss to be competitive.

-They want the ebook price to be competitive with (i.e., less than) the highly discounted physical prices in the market.

They believe that this is the best chance for publishers to challenge the 9.99 price point otherwise they will continue to supply to consumer through third parties, in effect cementing consumer expectation of 9.99 as a top price.

-They believe that windowing is not a sustainable model, and poses a very significant piracy threat. Eddy also suggested that the device will attract non-traditional ebook buyers and predicts an increase piracy in consumers don't have a legitimate store (Apple run) to purchase frontlist content from.

The device will start shipping in March and the store would have to be ready by then.

“They believe that this is the best chance for publishers to challenge the 9.99 price point....”

The Bad News

-Apple has advised us that the ceiling for ebook pricing is indeed 14.99, for books sold for up to \$30.00. For NYT bestsellers it is 12.99. Eddy was willing to create an additional tier, in order to move 24.99 to an ebook maximum price of \$11.99, instead of 1

HBG00013352

Plaintiff Exhibit
US v Apple
12-cv-00456
PX-0174

From: McIntosh, Madeline
To: Close, Amanda; Updike, Jaci; Von Moltke, Nina; Shatz, Matt; Malavva, Nihar; Martin, Matthew; Dohle, Markus; Weber, Andrew; Vaughn, Chelsea; Thompson, David; Demayo, Joan; Fischbach, Kelly
Sent: 1/10/2010 2:28:50 AM
Subject: privileged & confidential: call with Keith from Apple

Keith and I spoke earlier this evening. I would say it was a good call, in that I did learn a bit more and, if nothing else, I was able to give him insight into why we're feeling stuck in evaluating our next move. I'm still feeling unclear on what our best next move is, but I can at least report on the content of the conversation.

What I learned (some of this is clarification, not completely new):

How they got to their proposal:

- o Eddy felt it was the only way to get all publishers committed to simultaneous digital-print release. They think ebook delay is a disastrously bad move and so they think a key role they need to play is to bring those publishers back to simul release, and the only way to do that is through price protection.
- o Eddy has been particularly focused on the NYT bestseller prices (Keith suggested Eddy may be overestimating the impact of the NYT titles on the sales mix), both for digital and print. **They decided they had to come up with a way that would move the whole market off 9.99 and they think an agency model is the only way to do it.**
- o They don't want to get into the business if it means either losing money or being uncompetitive. Because they may be overestimating the impact of new hardcover releases on the mix, they are concluding they'll lose money in a wholesale model.
- o If not for the above dynamics, they would be comfortable with a model, since that's what they have in their other content stores. They would take our wh... on top. But...

“They decided they had to come up with a way that would move the whole market off 9.99 and they think an agency model is the only way to do it.”

- o He asked if we would share what portion of our sales (units and revenue) come from the following slices: 1) NYT hardcovers, 2) other hardcovers in their first year, 3) trade paper in first year, 4) trade paper afterwards, 5) mass market in first year, 6) mass market afterwards. **Dave: doable?**
- o He and Eddy have been studying the Jan 1 NYT list and comparing prices in print and digital across Amazon, BN, Walmart, and what those prices would be under their model. He's going to ask Eddy if he can send that to us. But we can do this exercise ourselves, too. I'll get a grid started.

Random House Confidential Business Information

PX-0174 / 1

PX-0174

RH-USDOJ-00001850





PX-0613

From: Eddy Cue <cue@apple.com>
Sent: Tuesday, January 26, 2010 11:16 AM
To: Reidy, Carolyn <UReidCa@cbs.com>
Subject: Re: Thanks

The PR contact is -
Katie Cotton
katicoc@apple.com

eddy

On Jan 26, 2010, at 11:03 AM, Reidy, Carolyn wrote:

> Eddy: I think I will go into withdrawal now that I don't have to discuss Exhibit A or Clause 6(f) anymore!
>
> I take it from the time of this email that you didn't get out of New York last night—either that or you are an early riser in California!
If you didn't get out, I hope that's good news for our industry, and not because you ran into airport delays.

>
> I too believe this will be a great moment in book publishing. **I'm hoping that Wednesday's event will erase any lingering feeling of failure at not having been able to move you further out of your "box" (she said dryly) and will sustain us as we move through the next steps in this process of changing the industry.**

>
> I did alert Stephen King yesterday afternoon that UNDER THE DOME might be featured from the stage tomorrow (we do like him to be fully aware of anything happening involving him) and he was extremely pleased to hear that. He will also be ready with a positive comment (about being happy to see books made even more available from such a good retailer—he's a huge iTunes fan) if the press goes to him for a comment (the second reason I alerted him)—they usually do try and get comments from him on anything that is digital related when his book(s) are even tangentially mentioned.

>
> I look forward to seeing you on Wednesday, too.

>
> You were going to send me a PR name I can pass on?

> Carolyn

> -----Original Message-----

> From: Eddy Cue [mailto:cue@apple.com]

> Sent: Tuesday, January 26, 2010 9:51 AM

> To: Reidy, Carolyn

> Subject: Thanks

> Hi Carolyn,

> I feel like I have to send you an email and talk everyday now! **You are real leader of the book industry** I appreciate all your efforts in making this happen. I really believe this will be great moment in book publishing.

>
> I look forward to seeing you on Wed!

> Eddy

Plaintiff Exhibit
US v Apple
1:10-cv-0233
PX-0613



Carolyn Reidy



SIMON &
SCHUSTER

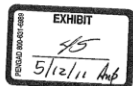
“I’m hoping that Wednesday’s event... will sustain us as we move through the next steps in this process of changing the industry.”



Eddy Cue



“You are a real leader of the book industry.”



CONFIDENTIAL

DOJ-SS0075849

STATE-DOJ-00002927



PX-0094

From: Sargent, John
Sent: Tuesday, February 9, 2010 12:15 PM (GMT)
To: 'Somerfield, Benita' <BenitaS@flfw.com>
Subject: RE: Congratulations?

Plaintiff's Exhibit
US v Apple
12-cv-00338
PX-0094

Actually, the deal that 5 of us did with Apple meant someone was gonna have to do it. Just luck of the draw that it was me. As it turned out I did a good job (thankfully). Interesting in that we did the Apple deal with no contact with other publishers, yet when Jobs announced he had 5 on the agency plan things were clear. **The optics make it look like I stood alone, but in the end I had no doubt that the others would eventually follow.** Doesn't mean Amazon couldn't have kept those buy buttons off though...

-----Original Message-----
From: Somerfield, Benita [mailto:BenitaS@flfw.com]
Sent: Tuesday, February 09, 2010 7:06 AM
To: Sargent, John
Subject: RE: Congratulations?

Uh-huh.
You are.
What you did, what you accomplished is major for this industry. And people will react to you differently forever...so... get used to it! No one else had the nerve nor the brains to pull this off, and Amazon would have remained the big bully in the schoolyard.

-----Original Message-----
From: Sargent, John [mailto:John.Sargent@macmillan.com]
Sent: Tuesday, February 09, 2010 7:03 AM
To: Somerfield, Benita
Subject: RE: Congratulations?

Hero indeed. It is actually pretty strange. People react differently to me now. Am hoping it all blows over quickly...

-----Original Message-----
From: Somerfield, Benita [mailto:BenitaS@flfw.com]
Sent: Tuesday, February 09, 2010 7:00 AM
To: Sargent, John
Subject: RE: Congratulations?

Great!
I'm very happy to hear that you got everything you needed. Maybe your 15 minutes of fame are over(happily)for you. But...you are the hero of this saga!

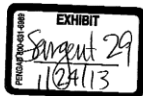
The 18th is good for me.
Looking forward to seeing you then and good luck to us both getting out of here on Thursday.B

-----Original Message-----
From: Sargent, John [mailto:John.Sargent@macmillan.com]
Sent: Tuesday, February 09, 2010 6:52 AM
To: Somerfield, Benita
Subject: RE: Congratulations?

Can do the 18th or the 19th. The quote, and the only thing I have said to the press, is "We are delighted to be back in business with Amazon". It happens to be true! My 15 minutes of fame is over, as it should be. We signed a deal with Amazon Friday night at 5:00. Not perfect, but we got everything we needed. Back to business as usual, at least for now! Hope you get to Florida. I'm supposed to fly out Thursday to Utah...

"The optics make it look like I stood alone, but in the end I had no doubt that the others would eventually follow."

Confidentiality requested by Sidley Austin LLP
pursuant to Tex. Bus. & Com. Code, Section 15.10(i)
and any other applicable state laws



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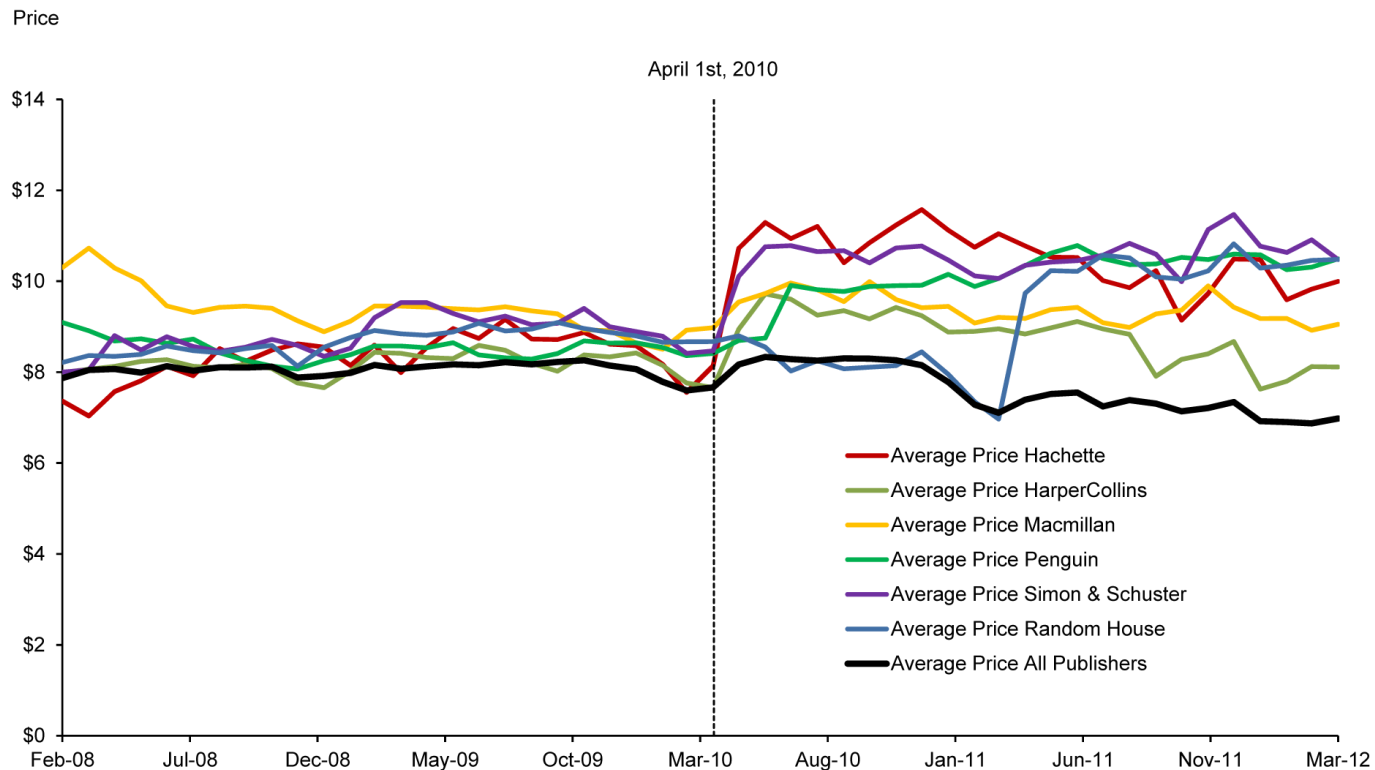




DX-434

CONTAINS MATERIAL DESIGNATED AS HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER

Average eBook Retail Prices for Sony, Amazon, Barnes & Noble, Apple, Google, Books-A-Million, and Kobo February 2008 – March 2012



Source: Sony Transactions Data, Amazon Transactions Data, Barnes & Noble Transactions Data, Apple Transactions Data, Google Transactions Data, Books-A-Million Transactions Data, Kobo Transactions Data



e-Book Business Prior to Apple's Entry





Wholesale Model for Print Books



Publisher

Establishes list price for book
and sells it to retailer for
percentage of list price
(usually 50%)



Retailer

Establishes
retail price for
consumer



Consumer

Pays
retail price



Original Wholesale Model for e-Books



Publisher

Establishes digital list price typically 20% lower than print list price and sells book to retailer for percentage of digital list price (usually 50%)

EXAMPLE

\$25 list price, \$20 digital price



Wholesale price sold to the retailer



Retailer

Establishes retail price for consumer

EXAMPLE



Retail price sold to consumer



Consumer

Pays retail price

EXAMPLE





Publishers Revise Wholesale Model for e-Books

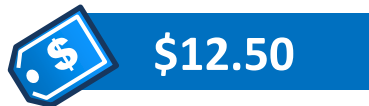


Publisher

Establishes digital list price
equal to print list price and
sells book to retailer for
percentage of digital list
price (usually 50%)

EXAMPLE

\$25 list price, **\$25** digital price



Wholesale price sold
to the retailer



Retailer

Establishes
retail price for
consumer

EXAMPLE



Retail price sold
to consumer



Consumer

Pays
retail price

EXAMPLE





PX-0219

Plaintiff's Exhibit
US v Apple
12-cv-00253
PX-0219

From: Young, David
Sent: Monday, January 19, 2009 08:21:22 AM
To: ARNAUD NOURRY[ANOURRY@hachette-livre.fr]
Subject: RE: e-books



Arnaud Nourry



“I am told Random House is concerned about the future of e-books and the potentially dominant role played by Google and Amazon.

Would it make sense for the 2 of us to have meetings / diner [sic] with Markus Dohle, Brian Murray, John Sargent and whoever, in order to discuss options?”

Arnaud



David Young



“I am having dinner with that group on January 29 and will raise the matter then.”

PX-0219 / 1

PX-0219





PX-0274

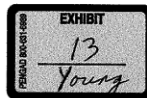
Plaintiff's Exhibit
US v Apple
12-cv-0225
PX-0274

From: NOURRY ARNAUD
Sent: Friday, August 14, 2009 01:30:40 PM
To: David.Young@hbgusa.com
Subject: Re: scanned eBook article

I fully support your decision David. I do not understand why the industry is not yet at full speed on this!
best
Arnaud

Le 14 août 2009 à 18:55, "Young, David" <David.Young@hbgusa.com> a écrit :

> Arnaud:
>
> I thought you should be aware of this article as it has implications
> on our decision to delay the Kennedy autobiography. It sickened me
> to read "a hardcover book usually sells for \$25 to \$35, while e-
> book sells for less than \$10". There is that witched \$9.99 price
> point becoming a de facto standard. You should know that I have
> been told by a reliable source that the publishers voted for the Dan
> Brown to be delayed but they were over-ruled by Markus who is
> apparently 'obsessed' by his desire to meet Jeff Bezos: why this
> should matter to him and what he thinks he would gain from such a
> meeting is beyond me. He appears to be an appeaser which is not
> good with them being the market leader - let's change that!
>
> We have brought forward the publication of EMK's book to September
> 14 through brilliant work by Ken and his team. We hope, therefore,
> to publish when the Senator is still alive so that all subsequent
> press coverage can consider his life informed from his point of view
> rather than other published sources. Vicki and EMK are thrilled by
> the new date. We have decided to postpone the publication of the
> eBook edition until December 26 saying that we wanted the public to
> first experience the print edition as it contained over 100 colour
> photographs and paintings, many that have never been seen before
> (and could not be seen well on any of the existing eBook devices).
> Amazon were here this week, offering their bribes and threatening
> dire consequence over any delay. They may well not sell the HC
> edition but we'll just have to front that out. Completely
> confidentially, Carolyn has told me that they are delaying the new
> Stephen King, with his full support, but will not be announcing this
> until after Labor Day so that she can have an enjoyable vacation!
> For the same reasons, I have asked Maja etc not to make any
> statements or send updated ONIX feeds until August 31 when I will be
> back in the office.
>
> No comment required from you, and I am sorry to send this whilst you
> are on vacation, but I felt it important to keep you up to date with
> this particular issue. I think it would be prudent for you to
> double delete this from your email files when you return to your
> office.
>
> My best,
>
> David
>
>
> This may contain confidential material. If you are not an intended
> recipient, please notify the sender, delete immediately, and
> understand that no disclosure or reliance on the information herein
> is permitted. Hachette Book Group, Inc. may monitor email to and
> from our network.
> <eBook Article.PDF>



CONFIDENTIAL

HBG-NOUA000049238

PX-0274 / 1

PX-0274



“Completely confidentially, Carolyn has told me that they are delaying the new Stephen King, with his full support, but will not be announcing this until after Labor Day so that she can have an enjoyable vacation!”



PX-0274

Plaintiff's Exhibit
US v Apple
12cv00253
PX-0274

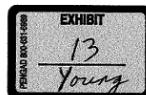
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> office.
>
> My best,
>
> David
>
>
> This may contain confidential material. If you are not an intended
> recipient, please notify the sender, delete immediately, and
> understand that no disclosure or reliance on the information herein
> is permitted. Hachette Book Group, Inc. may monitor email to and
> from our network.
> <eBook Article.PDF>

"I think it would be prudent for you to double delete this from your email files when you return to your office."



CONFIDENTIAL

HBG-NOUA000049238

PX-0274 / 1

PX-0274





Competition and collaboration

Competition for the attention of readers will be most intense from digital companies whose objective may be to disintermediate traditional publishers altogether. This is not a new threat but we do appear to be on a collision course with Amazon, and possibly with Google as well. It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy. This is the context for the development of the Project Z initiatives in London and New York. We shall be prepared to discuss these, and the London project in particular, when we meet next month but there will be significant costs and risks.

The supply chain

The growth of e-books, and of other digital formats, will certainly reduce the requirement for physical storage and transportation. We shall need to review our warehousing infrastructure, especially in the US, with the goal of reducing the number of warehouses we operate. Our planning in this area is still at an early stage.

despite the potential availability of profitable new agency clients, because of the uncertainty surrounding the growth of the physical book market and the possibility that Australia may move towards an open market during the life of this plan.

Global publishing

The present copyright model is under threat from readers, digital channels and, in the case of Australia, from Government. We therefore need to take a more global approach to our publishing in anticipation of the demise of the territorial copyright regime. The trend toward global publishing presents numerous threats, particularly in the area of piracy, but should work to the relative advantage of companies with international networks and recognised brands. We are making a start with a more co-ordinated approach to the publication of classics and business books, with more categories – children's publishing included – likely to follow in time. Our digital strategy, content management programme, international sales and workflow design are already managed on a global basis but we shall probably need to add other functions to the list during the next three years.

The reorganisation of the UK companies has brought a closer alignment with the US management structure and this should be helpful in realising our global objectives. Finally, we must continue to invest in emerging market opportunities and will introduce changes in management responsibility in October to give additional emphasis to these territories.

Free

Pricing will be a major preoccupation over the life of this plan. The emergence of a new generation of multi-purpose e-book readers, appealing to a younger audience, will require a more sophisticated approach to mobile technology and more creative pricing. We shall try to resist the momentum towards free content through the development of new pricing models. Bundling, micro-content, subscription and pay-per-view will all play a role. This will, as we know, necessitate investment in our inadequate rights systems.



“Competition and collaboration”

“...we do appear to be on a collision course with Amazon, and possibly with Google as well.”

“It will not be possible for any individual publisher to mount an effective response, because of both the resources necessary and the risk of retribution, so the industry needs to develop a common strategy.”



PX-0344

From: Moonves, Leslie <leslie.moonves@cbs.com>
Sent: Wednesday, September 23, 2009 2:58 PM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Cc: Ianniello, Joseph <Joseph.Ianniello@cbs.com>
Subject: RE: EBooks

Plaintiff's Exhibit
US v Apple
15civ0024
PX-0344

Carolyn,

I enjoyed the discussion. Depending on Stephen King's reaction, that might be an excellent first step to change the equation here. I don't mind the fight as long as we can win it. I look forward to more discussion.

Leslie

From: Reidy, Carolyn [mailto:Carolyn.Reidy@Simonandschuster.com]
Sent: Wednesday, September 23, 2009 11:11 AM
To: Moonves, Leslie
Cc: Ianniello, Joseph
Subject: EBooks

Leslie:

Thank you for the discussion this morning about our proposed eBook terms. You are absolutely correct: we've always known that unless other publishers follow us, there's no chance of success in getting Amazon to change its pricing practices. Your excellent and direct questions made me realize that I do need to have a better idea of how the rest of the negotiation will go before we can begin it. And of course you were right that without a critical mass behind us Amazon won't "negotiate," so we need to be more confident of how our fellow publishers will react if we make a move like this. While I am fairly sure that at least two of them would quickly follow us, our conversation made me feel that I need to shore up that confidence.

Stephen King comes in tomorrow to discuss what to do about his novel. I believe he is thinking of holding back the eBook release of UNDER THE DOME until after Christmas. We will propose to him that he let us offer these new terms on his book alone -- rather than not release it, offer it to Amazon and other retailers on the "new terms" so that it's their choice whether to sell it or not. If he agrees (and I can't predict), it might be an interesting experiment as to Amazon's and other publishers' reactions.

We will keep thinking of how to attack the problem (as we perceive it) of current eBook pricing: as you realize, we think it's too important to ignore. But clearly we need to "gather more troops" and ammunition first!

More to come.

Carolyn



CONFIDENTIAL

SS00028729

PX-0344 / 1

PX-0344



"You are absolutely correct: we've always known that unless other publishers follow us, there's no chance of success in getting Amazon to change its pricing practices."

"And of course you were right that without a critical mass behind us Amazon won't 'negotiate,' so we need to be more confident of how our fellow publishers will react if we make a move like this."

"We will keep thinking of how to attack the problem (as we perceive it) of current eBook pricing.... But clearly we need to 'gather more troops' and ammunition first!"



Apple's Entry





Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray



HarperCollins



On December 8, Mr. Cue reaches out to Mr. Murray and Mr. Dohle to set up calls for the following day



Eddy Cue



PX-0314



Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray



HarperCollins



On December 8, Mr. Cue reaches out to Mr. Murray and Mr. Dohle to set up calls for the following day



Eddy Cue



PX-0314

December 10, 2009



Brian Murray



HarperCollins



On December 10 at 9:47, Mr. Murray sends an internal e-mail concerning his call with Mr. Cue



HarperCollins

PX-304



Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray

HarperCollins

On December 8, 2009, Mr. Murray reaches out to Mr. Cue and Mr. D... for the following day



Eddy Cue



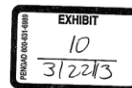
PX-0314

From: Murray, Brian (HarperCollins US)
Sent: Thursday, December 10, 2009 9:47:42 PM
To: Redmayne, Charlie
Subject:

We should put a proposal together for apple. Do u think we can find time tomorrow to outline a few options?
We need Ana Maria b/c she also had a meeting with them a few months ago. I think we should strike while the door is open. And also bring in RH if possible.

Plaintiff Exhibit
US v Apple
David S. Kim
PX-0304

“We should put a proposal together for Apple.
... And also bring in RH if possible.”



IGHLY CONFIDENTIAL

HC-DOJ-0083080

PX-304



Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray



HarperCollins



On December 8, Mr. Cue reaches out to Mr. Murray and Mr. Dohle to set up calls for the following day



Eddy Cue



PX-0314

December 10, 2009



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HarperCollins



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HarperCollins

PX-304

December 10, 2009



Brian Murray



HarperCollins



On December 10 at 9:52, Mr. Murray e-mails Mr. Dohle



Markus Dohle



RANDOM HOUSE

PX-0448



Apple Facilitates Publisher Communication

December 8, 2009



Brian Murray



HarperCollins

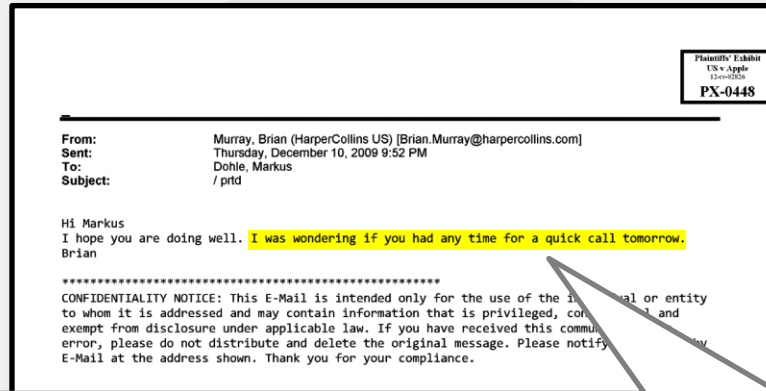
On December 8, 2009, Apple reaches out to Brian Murray and Mr. Dohle for the following day



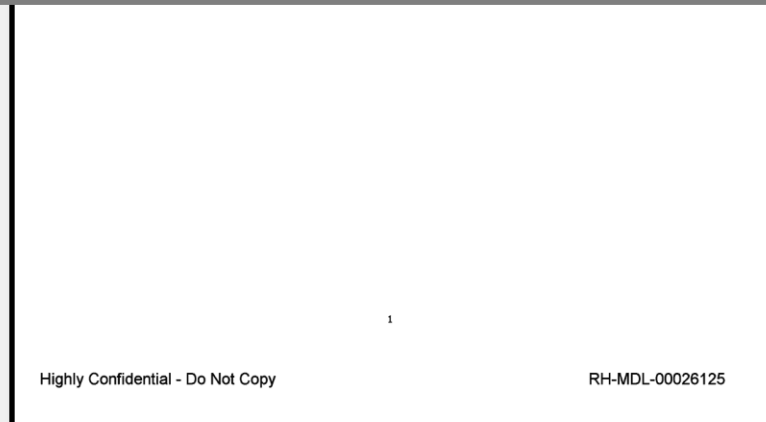
Eddy Cue



PX-0314



“I was wondering if you had any time for a quick call tomorrow.”



PX-304

December 10, 2009



Brian Murray



HarperCollins

at 9:52, mails

Mr. Dohle



Markus Dohle



RANDOM HOUSE

PX-0448



“David Young.... Much happier
cuz of meeting. Not spoil fun....
Check in after. Dinner in Jan.
Top Man talks different
language. Not \$9.95.”

“David Young.... Much happier
cuz of meeting. Not spoil fun....
Check in after. Dinner in Jan.
Top Man talks different
language. Not \$9.95.”



PX-0299

Plaintiff's Exhibit
US v Apple
12-cv-02926
PX-0299

From: Young, David
Sent: Thursday, December 17, 2009 06:53:31 PM
To: Reidy, Carolyn[Carolyn.Reidy@Simonandschuster.com]
Subject: RE:



Carolyn Reidy



“David: do you have a phone number for Eddie Cue...? He didn’t have a card when got to me (we were last and he left here to go to the plane) – or even an email address? I want to take up your suggestion to email him about the ‘term sheet’...”



David Young



“Email is cue@apple.com. I’ll send you his phone number tomorrow.”

CONFIDENTIAL

HBG-YOUNG000103571

PX-0299 / 1

PX-0299





Apple Provides Information to Publishers About Other Publishers

other publishers want = \$13-\$15 range, get by including extra material

They do the campaign
TV + outdoor advertising / not
Reading + Ebooks
Wants \$100 mill - 1/2 + 1/2 !!
Now two - kids + over 4.5 - who read
+ own their machines
Robinson Patman not apply

Bue-Moore

other publishers want = \$13-\$15 range, get by including extra material

Sts - 20-30% discount ebk > pbk.
- disnt to retailer 30-40%
- retailer still disnt 30% more
=> \$30 -> \$17
all parties whole / same

Macmillan - offer enhanced only to follow screen + color (not Amazon)

ing
loor, not a MAP (min.
dune price / actually is a
minimum selling price.
Apple / retailer sells below
amount they bought
it at / publisher, can't
sell
apple not worried - low cost
provider. strategy.

Emily
like pre-views, etc.

Macmillan - offer enhanced only to follow screen + color (not Amazon)

back of book ads.
link in book (browser / internet connectivity)
free form splash page for
directly related to book
Author App.
not other bks not by author
link to sites

Reporting -
usage: sales; mkt share data
user: non-ID w/zip data

CONFIDENTIAL

SS00029308

PX-0159

PX-0359



PX-0036

Priority Label
10-11-12
PX-0036

Subject: Re: New Info Today
From: Keith Moerer <kmoerer@apple.com>
Cc: Kevin Gail <kgail@apple.com>
To: Eddy Cue <cue@apple.com>
Date: Thu, 17 Dec 2009 05:57:39 -0800

Couple of other things I just thought of...

Harper:

* CEO is co

* expects 50

enhanced ve

On Dec 17,

Kevin capt

MacMillan

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* CEO was

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* MacMill

HarperCollins

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another 9k

* WW right

* Have lots

ebooks yet

* production

should be s

Highly Confidential

PX-0036 / 1

Generally turned on unless contractual issue. Small issue for them.

Book lending - they allow it subject to rights constraints, I lend at a time. We spoke about household lending, ie, our DRM ecosystem.

5k books in ebooks

mobi, epub file most often (everything in that) - send through Ingram

excited about launch

AAP best bet for advertising idea

They really worried about piracy and like apple b/c DRM that will get us to day and date

Worried about library players

First to talk about withdrawal rights, because of reversion rights to authors

HarperCollins

Interested in agency model to fix Amazon pricing (we said no)

They have lots of ww rights (compared to others)

Rights and Publishing Overview page in their prez has other info like 6 400 ebooks (400+ ww rights)

9 000 ebooks by July 2010

interested in "enhanced" ebook at same time as hardcover

Simon and Shuster

Great meeting

Tried to meet with us for a long time. Very happy we're there

Impossible to participate at those numbers re advertising idea (total budget 25m for year), and thought AAP is conservative and didn't think could do either

Most aggressive of publishers

Very interested in doing lots of linking from books, upsell etc. (will be good partner)

They hate Amazon pricing

Highly Confidential

APLEBOOK-01601745

PX-0036 / 3

PX-0036-003



“Interested in agency model to fix Amazon pricing (we said no)”



Apple & Publisher Conspiracy Commences

“I want to update you [on] all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes.”

Priority Exhibit
US v. Apple
Exhibit
PX-0056

From: Eddy Cue [cue@apple.com]
Sent: Friday, December 18, 2009 10:45 PM
To: Dohle, Markus
Subject: iTunes

Hi Markus,

I am back in NY for a vacation. Are you back in NY? Do you have anytime on Mon or Tue to get together? I want to update you all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes. If not, can I call you?

Eddy



RANDOM HOUSE

Markus Dohle

Exhibit 16
Cue
03/12/13
K. Schroeder
csr, rpr, ccr
RH-MDL-00026213

Highly Confidential - Do Not Copy

PX-0056 / 1 PX-0056

Confidentiality requested by Sidley Austin LLP pursuant to Tex. Bus. & Com. Code, Section 15.10(i) and any other applicable state laws

PX-0501 / 1 PX-0501

MAC 0042796

CONFIDENTIAL
PX-0502 / 1 PX-0502

DOI-SS0075864

Priority Exhibit
US v. Apple
Exhibit
PX-0501

From: Eddy Cue <cue@apple.com>
Sent: Saturday, December 19, 2009 3:44 AM (GMT)
To: Sargent, John <john.sargent@macmillan.com>
Subject: iTunes

Hi John,

I am back in NY for a vacation. Do you have anytime on Mon or Tue to get together? I want to update you all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes.

Hddy



MACMILLAN

John Sargent

CONFIDENTIAL
PX-0502 / 1 PX-0502

DOI-SS0075864

Priority Exhibit
US v. Apple
Exhibit
PX-0502

From: Eddy Cue <cue@apple.com>
Sent: Friday, December 18, 2009 9:38 PM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Subject: iTunes

Hi Carolyn,

I am back in NY for a vacation. Do you have anytime on Mon or Tue to get together? I want to update you all my findings and thoughts. I have some things I want to run by you. I only need 30 minutes.

Eddy



SIMON & SCHUSTER

Carolyn Reidy

CONFIDENTIAL
PX-0502 / 1 PX-0502

DOI-SS0075864



Apple & Publisher Conspiracy Commences



December 21
10:33 a.m.



Speak for
10 minutes and
45 seconds



Carolyn Reidy



Eddy Cue

PX-0788



December 21
12:17 p.m.



Speak for
17 minutes and
37 seconds



Markus Dohle



Eddy Cue

PX-0788



December 21
12:48 p.m.



Speak for
11 minutes



John Sargent



Eddy Cue

PX-0788



PX-0043

Subject: Book Publisher Update
Date: Mon, 21 Dec 2009 15:01:05 -0800
From: "Eddy Cue" <cue@apple.com>
To: "Steve Jobs" <sjobs@apple.com>
Message-ID: <244AB9F9-5825-47B4-81E4-EE65148DD24D@apple.com>

Plaintiff's Exhibit
US v Apple
12-cv-01528
PX-0043

I had good meetings with 3 publishers. All the talks went well and everyone understood our position and thought it was reasonable. They saw both the plus (solves Amazon issue) and negative (little less than they would like). They came up with exceptions (e.g. Harry Potter & Stephen King) where the book list for more \$35 and \$12.99 is too low. I told to focus on the other 99% and we can figure out how to solve the exceptions. They are all going to call me back by Wed.

Eddy

----- end message -----

“They saw both the plus (solves Amazon issue) and negative (little less than they would like).”

Exhibit 17
Cue
03/12/13

K. Schroeder
csr, rpr, ccrr

Confidential

APLEBOOK-00013734

PX-0043 / 1

PX-0043





PX-0540

From: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>
Sent: Tuesday, December 22, 2009 8:44 AM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Subject: Re: Apple -- CONFIDENTIAL

Plaintiff's Exhibit
US v Apple
12-00020
PX-0540

I will play with this today...30% margin will be steep...30% to them - [REDACTED] to the author and then [REDACTED] to us - based on a \$12.99 price...much less then we get now. I realize we can't keep what we have but this will be a real big change...more to come.

From: Reidy, Carolyn
To: Eulau, Dennis; Selleck, Michael; Rivlin, Elisa; Hirschhorn, Elinor H.
Sent: Mon Dec 21 12:03:33 2009
Subject: Apple -- CONFIDENTIAL

Eddy Cue phoned me this morning (rather than come in for a visit). He wanted to relay his conclusions, having met with all the major publishers and looked at the online retailing market once he got home. He had four points:

1. It is important that Apple make "at least some money" on the endeavor of selling eBooks, so a **30% margin**, like they have in the APP Store, is essential to them; they "need that".

2. It is important to Apple that there be "some level of reasonable pricing." They feel the only way to get this is for the industry to go to the **agency model**, like with the APP store - so the publisher sets the prices to the consumer; they feel it's a "better way to do it", unlike our usual terms of sale.

3. When he looked at sales in the "physical world", he noticed new releases were being sold for \$8-15 (I don't know if he means physical books being sold online or physical books being sold in physical outlets, but a quick check of three of our titles on Amazon agrees with this conclusion for their current book pricing of bestsellers.) Therefore they feel that **new release eBooks should be priced at \$12.99** - this is for "normal books" that have a SRP of \$25-30 in the physical form. Thus they'd be sold for "a little less than the real world".

Obviously publishers would make less than in the physical world, but we'd also remove costs and perhaps sell more. Would we make the same, he asked? I told him our models, worked on this summer, implied that pricing to the consumer would be around that price.

I asked if that meant Apple thought all eBooks should be priced the same. He said no, he thought pricing could vary from 99 cents to \$12.99 but he thought only "specialized" books, including books with color in them, which they hoped to sell, could/should be higher. I explained our thinking on Stephen King (not wanting to penalize the paper book reader), but didn't get a specific reaction.

When I asked, "so you see no retail discounting," he said: "You are doing the discounting, you are directly offering the consumer a bargain."

When they thought it through, they didn't think anything else would keep the market from its current "craziness."

4. **We would have to "get everyone else to go to the agency model."** When I said, "but of course we can't talk to our competitors," he said he didn't mean other publishers, but our accounts - to which I replied, if we make these our terms, then they are our terms.

In conclusion he asked that after we've had time to digest and discuss this, we/I write him an email with our reactions and thoughts.

"Therefore they feel that **new release eBooks should be priced at \$12.99....**"

"It is important to Apple that there be 'some level of reasonable pricing.' They feel the only way to get this is for the industry to go to the **agency model....**"

"We would have to 'get everyone else to go to the agency model.'"

CONFIDENTIAL

SS00028855



PX-0540

From: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>
Sent: Tuesday, December 22, 2009 8:44 AM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Subject: Re: Apple -- CONFIDENTIAL

Plaintiff's Exhibit
US v Apple
12-cv-00210
PX-0540

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To: Eulau, Dennis; Selleck, Michael; Rivlin, Elisa; Hirschhorn, Elinor H.
Sent: Mon Dec 21 12:03:33 2009
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In conclusion he asked that after we've had time to digest and discuss this, we/I write him an email with our reactions and thoughts.

"When they thought it through, they didn't think anything else would keep the market from its current pricing 'craziness.'"

CONFIDENTIAL

SS00028855



PX-0336

Plaintiff's Exhibit
US v Apple
12-cv-00203
PX-0336

From: Dohle, Markus
Sent: Tuesday, December 22, 2009 2:35 PM
To: McIntosh, Madeline; Close, Amanda; Von Moltke, Nina; Updike, Jaci
Subject: Re: Privileged and Confidential Attorney-Client Communication

Eddy said I would get the additional information "in the next days". I think he will fly back to CA today - so I have to wait until tomorrow to contact him again.

----- Original Message -----

From: McIntosh, Madeline
To: Dohle, Markus; Close, Amanda; Von Moltke, Nina; Updike, Jaci
Sent: Tue Dec 22 06:39:05 2009
Subject: Re: Privileged and Confidential Attorney-Client Communication

Fascinating. I think this can work for us. We have a small team who have pulled together a good model that allows us to play with different discount, pricing and royalty scenarios with relative ease. I think that team (incl Amanda, Nina, Chelsea) are meeting today, so this is good timing. We'll work on gathering any intel we can re what sort of fees Apple collects in their apps model.

Makus, did Eddy give you a sense of when he will be taking the next step (sending us information)?

----- Original Message -----

From: Dohle, Markus
To: McIntosh, Madeline; Close, Amanda; Von Moltke, Nina; Updike, Jaci
Sent: Tue Dec 22 04:22:27 2009
Subject: Privileged and Confidential Attorney-Client Communication

Dear all:

I had a good conversation with Eddy Cue today. He said he had meetings with all major houses to discuss their positions last week.

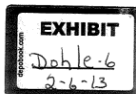
As you know he is against windowing. He also thinks that book prices are becoming too low - he is worried about the consumer perception. Therefore he suggests an "agency model" - APL is used to it in their apps business. The model puts the etailer in a distributor role receiving a service fee for every book sold - publishers would set the end consumer prices.

He assumes that if we did find a new TOS model which would provide APL with an acceptable margin, Amazon would lower the prices again following again their loss leadership strategy.

He said he would provide us with some data regarding his idea/model. He also said that he would call some publishing peers to discuss. APL's launch date would be end of March.

I told him I have doubts that Amazon would lower the prices again once we would establish a sustainable ebook business model for the market. I also indicated that Amazon would not accept a distributor model. He answered that windowing could be used to establish a distributor model on print pub date for ebooks (coming back to simultaneous publication).

1



Random House Confidential Business Information

RH-USDOJ-00032366

PX-0336 / 1

PX-0336



“He also thinks that book prices are becoming too low – he is worried about the consumer perception. Therefore he suggests an ‘agency model’....”



PX-0336

Plaintiff's Exhibit
US v Apple
12-cv-00336
PX-0336

From: Dohle, Markus
Sent: Tuesday, December 22, 2009 2:35 PM
To: McIntosh, Madeline; Close, Amanda; Von Moltke, Nina; Updike, Jaci
Subject: Re: Privileged and Confidential Attorney-Client Communication

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I had a good conversation with Eddy Cue today. He said he had meetings with all major houses to discuss their positions last week.

As you know he is against windowing. He also thinks that book prices are becoming too low - he is worried about the consumer perception. Therefore he suggests an "agency model" - APL is used to it in their apps business. The model puts the etailer in a distributor role receiving a service fee for every book sold - publishers would set the end consumer prices.

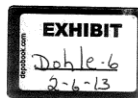
He assumes that if we did find a new TOS model which would provide APL with an acceptable margin, Amazon would lower the prices again following again their loss leadership strategy.

He said he would provide us with some data regarding his idea/model. He also said that he would call some publishing peers to discuss. APL's launch date would be end of March.

I told him I have doubts that Amazon would lower the prices again once we would establish a sustainable ebook business model for the market. I also indicated that Amazon would not accept a distributor model. He answered that windowing could be used to establish a distributor model on print pub date for ebooks (coming back to simultaneous publication).

"I also indicated that Amazon would not accept a distributor model. He answered that windowing could be used to establish a distributor model on print pub date for ebooks (coming back to simultaneous publication)."

1



Random House Confidential Business Information

RH-USDOJ-00032366

PX-0336 / 1

PX-0336





PX-0317

Plaintiff's Exhibit
US v Apple
13-cv-00253
PX-0317

From: Kot, Rick
To: McCall, Tim; Anderson, Kent
Sent: 3/24/2010 4:04:24 PM
Subject: RE: FYI

As you said, Tim, it *is* the Wild West, and it's going to be fun (?) to see how all this plays out.

If for any reason you'd ever need an editor to sit in on an Apple meeting, you know who to call.

From: McCall, Tim
Sent: Wednesday, March 24, 2010 12:00 PM
To: Anderson, Kent; Kot, Rick
Subject: RE: FYI

It's double-talk from Marcus. There was a price war under resell, and no one could connect reasons they're sitting on the sidelines and looking for a way to explain it to the fact they have to move into the Apple space. Their authors and agents.

Agency is anti-price war territory. We don't need to compete with other publishers on the price of our books. We've always priced our books around the same price in the physical world, and will likely end up doing the same thing in the digital world. We all know when it comes to reading, I'm not going to read Sarah Palin if she's \$2 cheaper than Ted Kennedy, if what I really want to read is Ted Kennedy.

Tim
[REDACTED]

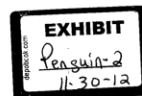
From: Anderson, Kent
Sent: Wednesday, March 24, 2010 11:39 AM
To: Kot, Rick; McCall, Tim
Subject: RE: FYI

Yet they seem to have no problem with 'The Girl with the Dragon Tattoo' selling for \$5.50 in both kindle and physical edition on Amazon. Hmmm.

From: Kot, Rick
Sent: Wednesday, March 24, 2010 11:31 AM
To: McCall, Tim; Anderson, Kent
Subject: FYI

Don't know if you've seen this
<http://www.macrumors.com/2010/03/24/random-house-holding-out-from-ibookstore-amid-fears-of-price-wars/>

“Agency is anti-price war territory.”





Publishers Attempt to Force Amazon off \$9.99



Publisher

Establishes digital list price
equal to print list price and
sells book to retailer for
percentage of digital list
price (usually 50%)

EXAMPLE

\$28 list price, **\$28** digital price



Wholesale price sold
to the retailer



Retailer

Establishes
retail price for
consumer

EXAMPLE



Consumer

Pays
retail price

EXAMPLE





An Agency Model Allows Publishers to Control Retail Price



Publisher

Establishes
retail price

EXAMPLE



Retailer

Sells to consumer
at retail price

EXAMPLE



Consumer

Pays
retail price

EXAMPLE





Publishers Earn Less Under an Agency Model



Publisher

Establishes
retail price

EXAMPLE



\$9.99

\$7.00

Publisher receives 70% before
author royalties



Retailer

Sells to consumer
at retail price

EXAMPLE



\$9.99



Consumer

Pays
retail price

EXAMPLE



\$9.99



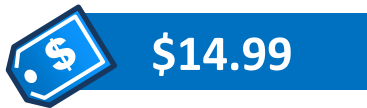
Publishers Can Raise Retail Prices Under an Agency Model



Publisher

Establishes
retail price

EXAMPLE



Retailer

Sells to consumer
at retail price

EXAMPLE



Consumer

Pays
retail price

EXAMPLE





Publishers Can Raise Retail Prices Under an Agency Model



Publisher

Establishes
retail price

EXAMPLE



\$14.99

\$10.50

Publisher receives 70% before
author royalties



Retailer

Sells to consumer
at retail price

EXAMPLE



\$14.99



Consumer

Pays
retail price

EXAMPLE



\$14.99



Apple's and Publishers' Goals Align

January 4, 2010

E-mail from:

To:



Eddy Cue



Carolyn Reidy

“As we discussed, here is what I think is the best approach for ebooks.”

Subject: iTunes
Date: Mon, 04 Jan 2010 09:16:28 -0800
From: Eddy Cue <cue@apple.com>
To: Carolyn Reidy <carolyn.reidy@simonandschuster.com>
Message-ID: <00677114-F680-4482-9C9B-D768F8AB34D1@apple.com>

Plaintiffs' Exhibit
US v Apple
Ex-0021
PX-0021

Hi Carolyn,

I hope you had a great holiday in Paris!

As we discussed, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would as well) and you would be free to establish the price that eBook would be sold. So that we could efficiently manage our agency role, we propose a corresponding range of prices for books at various stages in a book's publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$35 to sell for in the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you - \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

Exhibit 19
Cue
03/12/13
K. Schroeder
csr, rpr, cctr

APLEBOOK00434150

PX-0021 / 1

PX-0021





Apple's and Publishers' Goals Align

January 4, 2010

E-mail from:

To:



Eddy Cue



Markus Dohle

Subject: iTunes
Date: Mon, 04 Jan 2010 09:16:58 -0800
From: "Eddy Cue" <cue@apple.com>
To: "Markus Dohle" <mdohle@randomhouse.com>
Message-ID: <F307063E-161B-4CD8-B27B-A0FA04F34196@apple.com>

Plaintiff Exhibit
US v Apple
1:09-cv-02026
PX-0473

Hi Markus,

I hope you had a great holiday in Germany!

As we discussed, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would not sell it); and you would be free to establish the price that eBook would be sold. So that we could efficiently manage our agency role, we propose a corresponding range of prices for books at various stages in a publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$35 to sell for the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you - \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you - \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

APLEBOOK00434608

PX-0473 / 1

PX-0473



“As we discussed, here is what I think is the best approach for ebooks.”



Apple's and Publishers' Goals Align

Subject: Re: iTunes

Date: Mon, 04 Jan 2010 09:18:37 -0800

From: Eddy Cue <cue@apple.com>

To: "Sargent, John" <john.sargent@macmillan.com>

Message-ID: <0E2894F6-9145-4A0C-8DFF-B8DF1B8E6B27@apple.com>

Plaintiff's Exhibit
US v Apple
Exhibit
PX-0476

Hi John,

I hope you had a great holiday!

As we discussed, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would as well); and you would be free to establish the price that eBook would be sold. So that we could efficiently manage our agency role, we propose a corresponding range of prices for books at various stages of a book's publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$35 to sell for any of the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

On Dec 21, 2009, at 3:50 PM, Sargent, John wrote:

Hey Eddy. Have been thinking. Consider this completely blue sky, just a bit of brainstorming.

One of the problems we face is that most companies have contracts under the discount model. So what happens if we actually have two terms of sale. 1) 30% agency model with no windowing. 2) Discount model that includes windowing (essentially no change from the current terms we offer)? Everyone decides which model to buy under.

Confidential

APPLEBOOK00434151



January 4, 2010

E-mail from:



Eddy Cue

To:



John Sargent

“As we discussed, here is what I think is the best approach for ebooks.”



Apple's and Publishers' Goals Align

January 4, 2010

E-mail from:



Eddy Cue

To:



David Young

“After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.”

Subject: iTunes
Date: Mon, 04 Jan 2010 09:21:47 -0800
From: Eddy Cue <cue@apple.com>
To: David Young <david.young@hbgusa.com>
Message-ID: <953BE52E-855D-45E0-83E5-A40C6E07A6DE@apple.com>

Plaintiff's Exhibit
US v Apple
1:11-cv-02038
PX-0041

Hi David,

I hope you had a great holiday!

After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, we would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would as well); and you would be free to establish the price that eBook would be sold. So that we could efficiently manage our agency we propose a corresponding range of prices for books at various stages in a book's production and distribution evolution.

Apple would be to have any hardback book that retails physically for less than \$35 to sell for in any of the following tiers, determined by you -

\$2.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you - \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

Exhibit 20
Cue
03/12/13

APPLEBOOK-00012465

K. Schroeder
csr, rpr, ccrr

PX-0041 / 1

PX-0041





Apple's and Publishers' Goals Align

January 5, 2010

E-mail from:



Eddy Cue

To:



David Shanks

“After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.”

Subject: iTunes
Date: Tue, 05 Jan 2010 13:48:21 -0800
From: Eddy Cue <cue@apple.com>
To: David Shanks <david.shank@us.penguingroup.com>
Message-ID: <CD65BB9B-AB16-4C88-B05F-E6145BDB1381@apple.com>

Plaintiff's Exhibit
US v Apple
12a1-02825
PX-0040

Hi David,

I hope you had a great holiday!

After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes (of course if another ebook distributor was able to sell a book then we would as well); and you would be free to establish the price that eBook would be sold. So that we could efficiently manage an agency role, we propose a corresponding range of prices for books at various stages in a book's publication and distribution evolution.

It would be to have any hardback book that retails physically for less than \$30 to sell for in the following tiers, determined by you -

\$9.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

any trade or mass-market book would sell for any of the following tiers, determined by you - \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you - \$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential

Exhibit 21
Cue
03/12/13

K. Schroeder
csr, rdr, ccr

APLEBOOK00434155

PX-0040 / 1

PX-0040





Apple's and Publishers' Goals Align

January 5, 2010

E-mail from:



Eddy Cue

To:



Brian Murray

“After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.”

Subject: iTunes
Date: Tue, 05 Jan 2010 13:53:09 -0800
From: Eddy Cue <cue@apple.com>
To: Brian Murray <brian.murray@harpercollins.com>
Bcc: Keith Moerer <kmoerer@apple.com>
Message-ID: <C613438C-2BAE-40BD-9739-A315961AA544@apple.com>

Plaintiff's Exhibit
US v Apple
12-cv-02825
PX-0306

Hi Brian,

I hope you had a great holiday!

After talking to all the other publishers and seeing the overall book environment, here is what I think is the best approach for ebooks.

Just like the App Store, we are proposing a principal-agency model with you, where you would be the principal and iTunes would sell your product as your agent for your account. In exchange for acting as your agent, iTunes would get a 30% commission for each transaction.

On pricing, you would be free to determine whether to distribute any particular publication through iTunes or not. If another ebook distributor was able to sell a book then we would as well; and you would be free to establish the price that eBook would be sold. So that we could efficiently fulfill our agency role, we propose a corresponding range of prices for books at various stages in the publication and distribution evolution.

Our goal would be to have any hardback book that retails physically for less than \$30 to sell for in any of the following tiers, determined by you -

\$12.99, \$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

Any trade or mass-market book would sell for any of the following tiers, determined by you -

\$9.99, \$8.99, \$7.99, \$6.99, \$5.99, \$4.99, \$3.99, \$2.99, \$1.99, \$0.99

For any book that retails for above \$35, it would sell for any of the following tiers, determined by you -

\$14.99 and increments of \$5 above that (realistic pricing would be less than 50% retail)

There are several things we have to accomplish in order to sell ebooks at realistic prices -

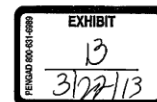
- books need to be cheaper to buy than physical
- you should make less per book since significant costs have been eliminated but still have a healthy, profitable sale
- all resellers of new titles need to be in agency model

We think these agency terms accomplishes all the goals we both have. I will try to schedule a call for us for tomorrow to catch up and determine the next steps.

--- Eddy

----- end message -----

Confidential!

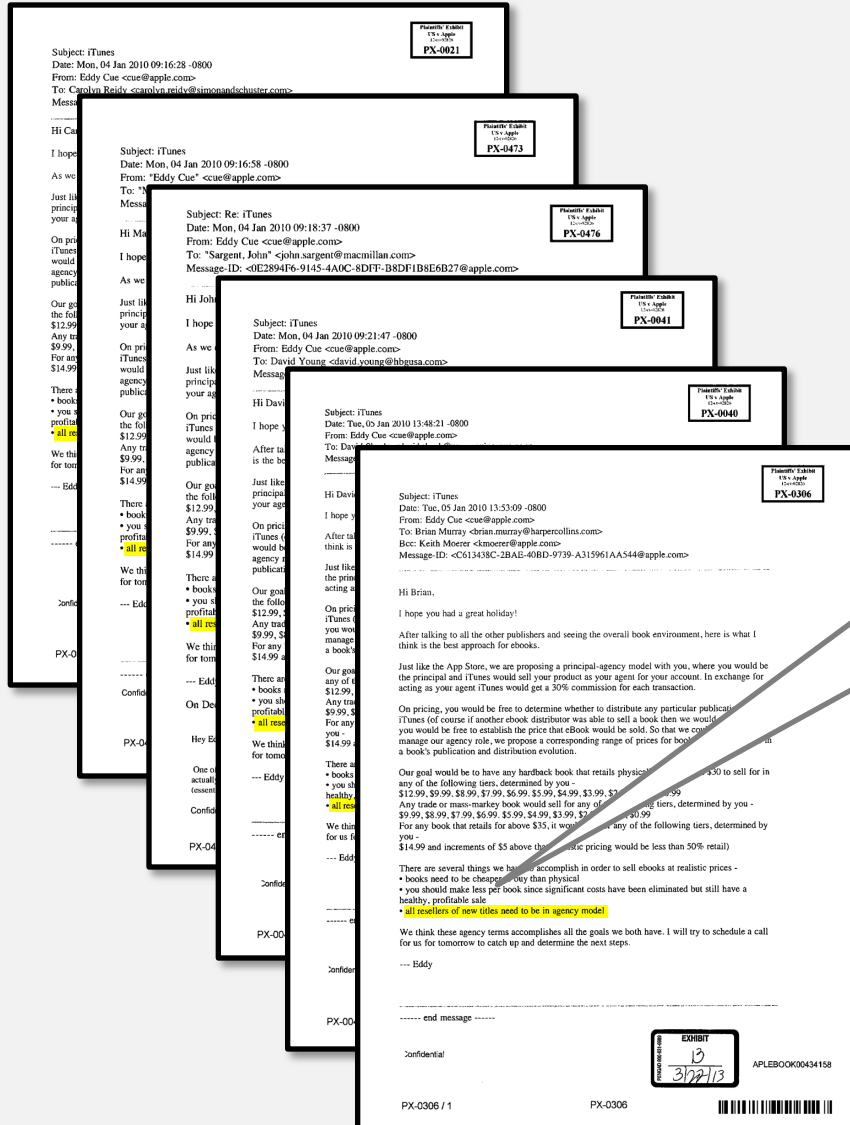


APLEBOOK00434158





Apple Acts to Facilitate Conspiracy

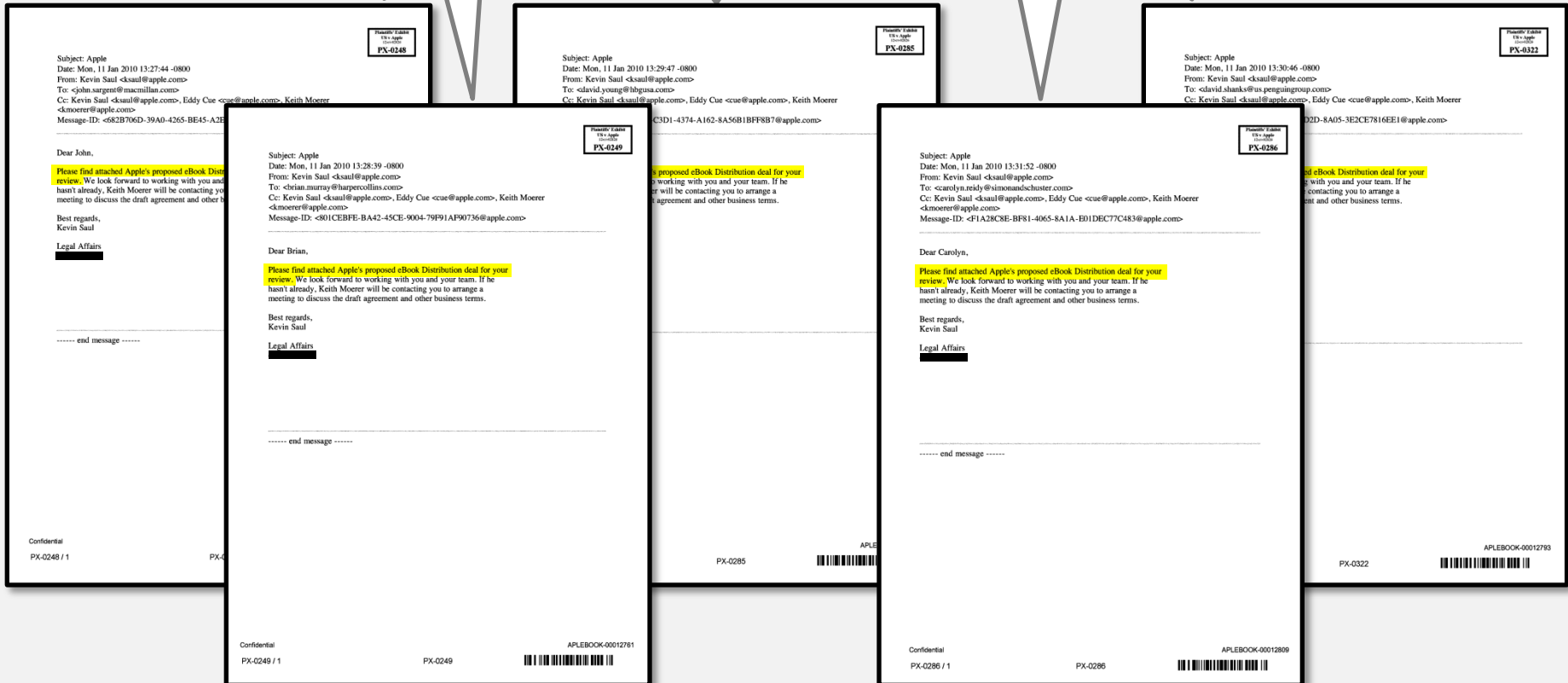


“[A]ll resellers of new titles need to be in agency model....”



January 11, 2010: Identical Draft Agreements Sent to Publishers

“Please find attached Apple’s proposed eBook Distribution deal for your review.”



PX-0248, PX-0249, PX-0285, PX-0286, PX-0322

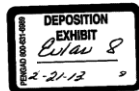


PX-0341

From: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Sent: Thursday, February 11, 2010 10:47 AM
To: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>; Rivlin, Elisa <Elisa.Rivlin@Simonandschuster.com>
Subject: FW: PRIVILEGED AND CONFIDENTIAL: APPLE

Plaintiff's Exhibit
US v Apple
13-cv-00253
PX-0341

From: Reidy, Carolyn
Sent: Thursday, February 11, 2010 10:46 AM
To: Moonves, Leslie
Cc: Ianniello, Joseph
Subject: PRIVILEGED AND CONFIDENTIAL: APPLE



Dear Leslie:

I wanted to keep you up to date on the status of our eBook negotiations with accounts. I apologize in advance for the length of this email, but I wanted to give you a full picture because I believe that within a few weeks Amazon will try and punish us in some way.

As you know, we signed a one-year contract with Apple designating them as an Agent to sell eBooks for us, at a 30% fee. This enables us to set the price to the consumer on our eBooks, with certain agreed ceiling prices on some new releases and best sellers. The Apple iTunes eBook store will go live around the end of March (exact date not yet determined). **In order to not be in a situation whereby we must price our adult new release eBooks sold through Apple at \$9.99, undercutting one of the reasons for making the deal, we need to change our eBook selling terms with our other eRetailers before that date.**

While we told Amazon that we were going to change to the Agency model before the iPad was announced, we have not yet sent our new contract over to them. Before we had even drafted it, Macmillan, as you've seen in the press, flew out to discuss their new Agency terms with Amazon, and had a very ugly and public fight with them: for a week Amazon removed the "buy" buttons on all of Macmillan's physical books from the Amazon bookstore and removed all the eBooks entirely from its site. Amazon did come to terms with Macmillan on an agency approach, it appears, and in fact stated publicly that it would have to give in to Macmillan's demands for higher prices because of Macmillan's monopoly on its titles (we of course call it copyright). Their settlement with Macmillan was very quick and we believe it was because the backlash on their actions was so strong and negative. Their own consumers were incredibly vocal in their displeasure with Amazon, both for its "Big Brother" actions (removing sample chapters that customers had downloaded of Macmillan titles) and for presuming to decide what customers could or should buy (many customers said they could very well decide for themselves if books were worth more than \$9.99). Even though about 1/3 of the comments on the site supported Amazon and its pricing, a full half to two-thirds were extremely critical. Secondly, Wall Street punished Amazon severely, and it lost over 6% of its value in two days after taking down Macmillan's books.

I give you this background because it appears that Amazon has decided that we are the next Apple publisher they are planning to negotiate with. We have heard that other publishers with whom Apple has announced deals have sent revised terms to Amazon and each has been told that Amazon is not ready to talk to them. We, on the other hand, have just received from Amazon on Tuesday a copy of a contract based on the Agency model reflecting the terms they would like to see. We believe that Amazon's strategy is to take the publishers who have come to terms with Apple on one at a time from small to large, skipping Hachette because their CEO has been so clear in public that he has a slush fund precisely to withstand any shortage in sales caused by an Amazon war.

“In order to not be in a situation whereby we must price our adult new release eBooks sold through Apple at \$9.99, undercutting one of the reasons for making the deal, we need to change our eBook selling terms with our other eRetailers before that date.”

CONFIDENTIAL

SS00031715

PX-0341 / 1

PX-0341





Apple's MFN Compels Publishers to Move All Retailers to Agency



Publisher



\$12.99

Establishes retail price



Apple



\$12.99

Sells to consumer
at retail price



Consumer



\$12.99

\$9.10

Publisher receives 70% before
author royalties



Amazon



\$9.99

Establishes retail price



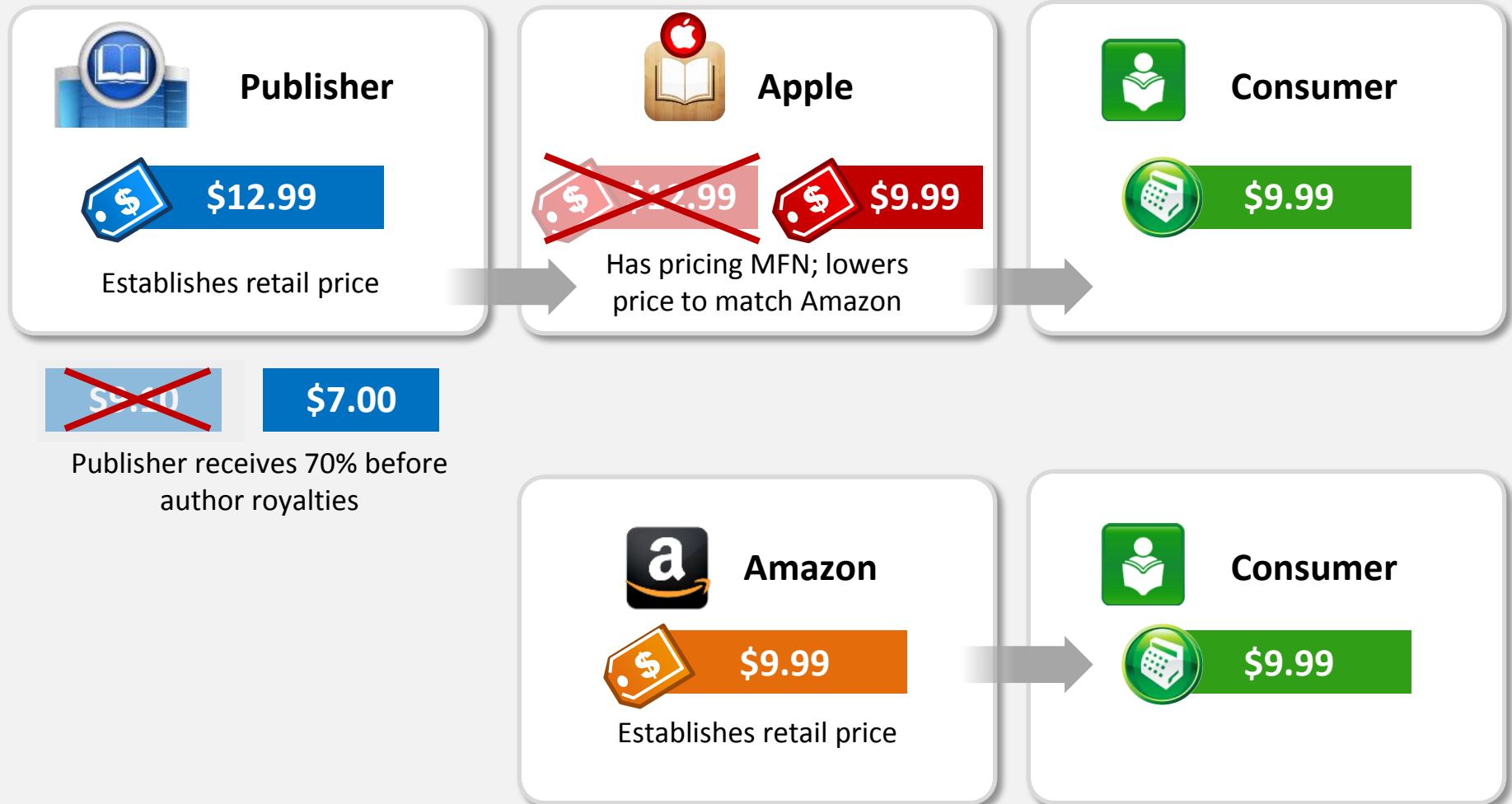
Consumer



\$9.99



Apple's MFN Compels Publishers to Move All Retailers to Agency





PX-0065

Plaintiff's Exhibit
US v Apple
12-cv-00203
PX-0065

Subject: Re: today
Date: Tue, 13 Apr 2010 05:39:43 +0000
From: "Pete Alcorn" <palcorn@apple.com>
To: "Oliver Schusser" <schusser.o@euro.apple.com>
Message-ID: <F0CA20D7-7D1E-41AB-9C7E-0DC362660CEE@apple.com>

Yep, I'm very happy with the outcome. Thanks for that note to Corinna -- that should get us kicked into gear there.

Interesting conversation with Keith after about MFN. He definitely feels the pain and frustration of selling that MFN. I told him that I think he and Eddy made it at least halfway to changing the industry permanently, and we should keep the pads on and keep fighting for it. I might regret that later, but right now I feel like it's a giant win to keep pushing the MFN and forcing people off the amazon model and onto ours. If anything, the place to give is the pricing -- long run, the mfn is more important. The interesting insight in the meeting was Eddy's explanation that it doesn't have to be that broad -- any decent MFN forces the model. Possible to claim that we don't really need the MFN in DE and FR, but then, it shouldn't be hard for the subs there to sign up to it.

Publishers in UK: Hachette, Penguin, Macmillan
Publishers in DE: Holtzbrinck, Bonnier, Drömer/Knauer
Publishers in FR: Hachette, Editis (Planeta), Flammarion (RCS)

Why would we stop at 3? Seems like we should go a bit broader to ensure success (I want to count!). We should negotiate with Random House in the EU -- might be a different reaction, they'll want the attention. We should also go after Oxford in a big way to get the UPs moving -- lots of titles there. We should work with Faber and the Alliance to see if we can shake all of them loose.

Re programming, let's talk about it. Need to get your thoughts in more detail.

As for negotiation, it would be great to have your support on the front end. With you and I and Corinna, we come in with three different perspectives. After we bag a couple, the existing partners become the third man, plus I'll start to internalize your perspective, as well as Corinna's.

Talk to you in the morning,

Pete

On Apr 12, 2010, at 8:44 PM, Oliver Schusser wrote:

Good meeting, we now have clarity on:
- launch date end of May
- launch countries UK, DE and FR
- standardized Euro pricing across Europe

EXH. NO. 9
DATE: 4-20-10
WITNESS: PATRICIA L. HUBBARD
CSR 440 3400

Highly Confidential

APPLEBOOK-00369168

“I feel like it’s a giant win to keep pushing the MFN and forcing people off the amazon model and onto ours.”

“The interesting insight in the meeting was Eddy’s explanation that it doesn’t have to be that broad – any decent MFN forces the model.”





PX-0540

From: Eulau, Dennis <Dennis.Eulau@Simonandschuster.com>
Sent: Tuesday, December 22, 2009 8:44 AM
To: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Subject: Re: Apple -- CONFIDENTIAL

Plaintiff's Exhibit
US v Apple
12-cv-00210
PX-0540

I will play with this today...30% margin will be steep...30% to them - [REDACTED] to the author and then [REDACTED] to us - based on a \$12.99 price...much less than we get now. I realize we can't keep what we have but this will be a real big change...more to come.

From: Reidy, Carolyn
To: Eulau, Dennis; Selleck, Michael; Rivlin, Elisa; Hirschhorn, Elinor H.
Sent: Mon Dec 21 12:03:33 2009
Subject: Apple -- CONFIDENTIAL

Eddy Cue phoned me this morning (rather than come in for a visit). He wanted to relay his conclusions, having met with all the major publishers and looked at the online retailing market once he got home. He had four points:

1. It is important that Apple make "at least some money" on the endeavor of selling eBooks, so a **30% margin**, like they have in the APP Store, is essential to them; they "need that".
2. It is important to Apple that there be "some level of reasonable pricing." They feel the only way to get this is for the industry to go to the **agency model**, like with the APP store - so the publisher sets the prices to the consumer; they feel it's a "better way to do it", unlike our usual terms of sale.
3. When he looked at sales in the "physical world", he noticed new releases were being sold for \$8-15 (I don't know if he means physical books being sold online or physical books being sold in physical outlets, but a quick check of three of our titles on Amazon agrees with this conclusion for their current book pricing of bestsellers.) Therefore they feel that **new release eBooks should be priced at \$12.99** - this is for "normal books" that have a SRP of \$25-30 in the physical form. Thus they'd be sold for "a little less than the real world".

Obviously publishers would make less than in the physical world, but we'd also remove costs and perhaps sell more. Would we make the same, he asked? I told him our models, worked on this summer, implied that pricing to the consumer would be around that price.

I asked if that meant Apple thought all eBooks should be priced the same. He said no, he thought pricing could vary from 99 cents to \$12.99 but he thought only "specialized" books, including books with color in them, which they hoped to sell, could/should be higher. I explained our thinking on Stephen King (not wanting to penalize the paper book reader), but didn't get a specific reaction.

When I asked, "so you see no retail discounting," he said: "You are doing the discounting, you are directly offering the consumer a bargain."

When they thought it through, they didn't think anything else would keep the market from its current pricing "craziness."

4. We would have to "get everyone else to go to the agency model." When I said, "but of course we can't talk to our competitors," he said he didn't mean other publishers, but our **accounts** - to which I replied, if we make these our terms, then they are our terms.

In conclusion he asked that after we've had time to digest and discuss this, we/I write him an email with our reactions and thoughts.

"We would have to 'get everyone else to go to the agency model.' When I said, 'but of course we can't talk to our competitors,' he said he didn't mean other publishers, but our **accounts** - to which I replied, if we make these our terms, then they are our terms."

CONFIDENTIAL

SS00028855



PX-0026

Plaintiffs' Exhibit
US v Apple
13-cv-00256
PX-0026

Subject: Book Publisher Update
Date: Wed, 13 Jan 2010 08:26:46 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Bcc: Kevin Saul <ksaul@apple.com>, Keith Moerer <kmoerer@apple.com>
Message-ID: <042C7E35-8C63-4FCA-BBBE-BFAAFF46195C@apple.com>

We met with 3 book publishers (Penguin, Hachette and Harper Collins) yesterday. One of them, we are meeting again today because the CEO became unavailable.

The response from both Penguin and Hachette was very similar -

- willing to do an agency model
- go agency model for new releases with everyone else
- agree that digital books should be cheaper than physical but
- need a higher tier(s)

They want to work with us and think we would be great for the industry and customers but if the only choice is take \$5-6 less for an ebook than today, they would prefer to holdback on Amazon and play that out.

Today, we are meeting with 3 other publishers and I will let you know what they say.

Eddy

----- end message -----

Exhibit 28
Cue
03/12/13

K. Schroeder
for the court

Confidential

APLEBOOK-00012481

“The response from both Penguin and Hachette was very similar –

- willing to do an agency model
- go agency model for new releases with everyone else”



PX-0058

Subject: Book Pricing update
Date: Sat, 03 Apr 2010 03:13:41 -0700
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Message-ID: <7BB78A4B-013A-47CF-A66F-EA71CSEDB312@apple.com>

Plaintiff Exhibit
US v Apple
12-cv-00256
PX-0058

We have reviewed all the books on Amazon and they have switched to agency with the publishers. Here is what they look like on Amazon. Note the disclaimer on each product detail page below ("This price was set by the publisher").

We are changing a bunch of Penguin titles to \$9.99 as I write this to because they didn't get their Amazon deal done.

Overall, our NYT bestsellers and new releases are the same as Amazon.

--- Eddy

----- end message -----

“We have reviewed all the books on Amazon and they have switched to agency with the publishers.”

Exhibit 48
Cue
03/13/13

K. Schroeder
cc: cue, rrr

Confidential

APPLEBOOK-00002151



PX-0055

Plaintiffs' Exhibit
US v Apple
12-cv-02936
PX-0055

From: Steve Jobs <sjobs@apple.com>
To: Eddy Cue <cue@apple.com>
Subject: Re: Book Prices Thoughts
Received(Date): Thu, 14 Jan 2010 18:23:09 -0800

I can live with this, as long as they move Amazon to the agent model too for new releases for the first year. If they don't, I'm not sure we can be competitive...
Steve

if they are offering a \$26 book to Amazon
On Jan 14, 2010, at 6:04 PM, Eddy Cue wrote:

Here is the pricing I think will push them to very edge and still have a credible offering in the market. These are the highest individual iTunes prices as each publisher can choose a lower price if they want.

List Price	Wholesale	iTunes 70%	Diff
\$20.01-22.50	\$10.00-11.25	\$9.99	\$7.00 \$3.00-4.25
\$22.51-25.00	\$11.25-12.50	\$10.99	\$7.70 \$3.56-4.80
\$25.01-27.50	\$12.50-13.75	\$12.99	\$9.10 \$3.40-4.65
\$27.51-30.00	\$13.76-15.00	\$14.99	\$10.50 \$3.25-4.50
\$30.01-35.00	\$15.01-17.50	\$16.99	\$11.90 \$3.10-5.60
\$35.01-40.00	\$17.51-20.00	\$19.99	\$14.00 \$3.51-6.00

The other point I want to get is lowering the price while the book is on the NYT Bestseller List. This will be hard to get because they will be losing an additional \$1.40, but we should try.
When a book that list for \$30 or less is in the NYT Bestseller List than the iTunes price will be no greater than \$12.99. Between \$30.01-35 in the NYT Bestseller List, the price will be no greater than \$14.99.

--- Eddy

Exhibit 30
Cue
03/12/13

K. Schroeder
CSF. RDR. CCR

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APPLEBOOK-03345509

“I can live with this, as long as they move Amazon to the agent model too for new releases for the first year. If they don’t, I’m not sure we can be competitive...”



Publishers Recognize MFN Forces Them to Agency

January 20, 2010



John Sargent



Meeting



Russ Grandinetti



PX-0482



Publishers Recognize MFN Forces Them to Agency

January 20, 2010



John Sargent



MACMILLAN



Meeting



Russ Grandinetti



PX-0482

- Jan 27th: Brian sent an e-mail saying they have decided to go to the agency model.

"In the interest of "no surprises", I wanted to let you know that we decided to change our ebook model for new releases to an agency model. Late last night we reached an agreement with our first agent, Apple. This wasn't a simple or easy decision but we've made it. I know that you are considering the implications of these changes. We will be ready to discuss this with you as soon as you are ready."

Macmillan:

Jan 20th: Russ met with John Sargent in NY. John indicated that he was working on an agency model but his plan was to offer both an agency and reseller model.

Jan 21st: John and Russ by phone. John indicated that the Apple contract required him to only offer the agency model only and wanted to explore other options with Russ. Russ indicatedXXXXXXXXXX

Jan 22nd: John and Russ by phone. Russ indicatedXXXXXXXXXX

Coming to Seattle for meeting.

"Jan 20th: Russ met with John Sargent in NY. John indicated that he was working on an agency model but his plan was to offer both an agency and reseller model."

Penguin:

No meetings or conversations about agency models. We have reached out but not been called back.

Hachette:

Jan 20th in NY. Laura met with Maja Thomas (head of digital for US who reports to David Young) Maja said they were looking at agency models but hadn't spoken to us about them assuming we would be uninterested. Stated that their lawyers had told them that they could only offer one model (either agency or reseller) but not both.

PRIVILEGED AND CONFIDENTIAL

January 27, 2010

AMZN-MDL-0161086
HIGHLY CONFIDENTIAL

PX-0482



Publishers Recognize MFN Forces Them to Agency

January 20, 2010



John Sargent



Meeting



Russ Grandinetti



PX-0482



John Sargent



Dinner



Eddy Cue



PX-0037, PX-0712



Apple Insists Macmillan Go to Agency with Everyone

January 20, 2010



John Sargent



Meeting



Russ Grandinetti



PX-0482



John Sargent



Dinner



Eddy Cue



PX-0037, PX-0712

January 21, 2010



John Sargent



E-Mail



Eddy Cue



PX-0037



Apple Insists Macmillan Go to Agency with Everyone

January 20,

Subject: Re: iTunes
From: "Eddy Cue" <cue@apple.com>
To: "Sargent, John" <john.sargent@macmillan.com>
Cc: "Brian Napack" <brian.napack@macmillan.com>

Plaintiff's Exhibit
US v Apple
12-cv-02926
PX-0037



John Sargent



MACMILLAN

"I am willing to give up on many...points.... The stumbling block is the single large issue that we clearly had a misunderstanding about."

> being absolutely reasonable to ask for (remarkable that you guys just
> say no to everything and still appear somehow to be reasonable!). The
> stumbling block is the single large issue that we clearly had a
> misunderstanding about. I was clear in my head with what your position
> was. Brian was clear as well after his discussion with Kieth. Somehow,



Eddy Cue



"I understand. I don't believe we are asking you to do anything, you haven't told us you are doing. We are just trying to get a commitment."

> I asked Kevin to send changes we discussed to Brian tonight. Please try
> to make your guys available tomorrow for Kevin as I think it will help a
> lot and we running out of time.
>
> Eddy

Exhibit 34
Cue
03/13/13

K. Schroeder
csr, rpr, ccr

Confidential

APPLEBOOK-01274492

Russ Grandinetti



PX-0482

PX-0037



Apple Insists Macmillan Go to Agency with Everyone

January 20, 2010



John Sargent



Meeting



Russ Grandinetti



PX-0482



John Sargent



Dinner



Eddy Cue



PX-0037, PX-0712



John Sargent



E-Mail



Eddy Cue



PX-0037

January 21, 2010



John Sargent



Phone Call



Russ Grandinetti



PX-0482



Apple MFN Requires Macmillan to Move Amazon to Agency

January 20



John Sargent



Meeting



Russ Grandinetti



PX-0482

Plaintiff's Exhibit
US v Apple
Download
PX-0482

From:
Sent:
To:
Cc:
Subject:
Attachment:

- Jan 27th: Brian sent an e-mail saying they have decided to go to the agency model.

"In the interest of 'no surprises', I wanted to let you know that we decided to change our ebook model for new releases to an agency model. Late last night we reached an agreement with our first agent, Apple. This wasn't a simple or easy decision but we've made it. I know that you are considering the implications of these changes. We will be ready to discuss this with you as soon as you are ready."

Macmillan:

Jan 20th: Russ met with John Sargent in NY. John indicated that he was working on an agency model but his plan was to offer both an agency and reseller model.

Jan 21st: John and Russ by phone. John realized that the Apple contract required him to only offer the agency model only and wanted to talk through options with Russ. Russ indicatedXXXXXXXXXX

Jan 22nd: John and RussXXXXXXXXXX
coming to Seattle for meeting.

"Jan 21st: John and Russ by phone. John realized that the Apple contract required him to only offer the agency model only and wanted to talk through options with Russ."

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Jan 20th in NY. Laura met with Maja Thomas (head of digital for US who reports to David Young) Maja said they were looking at agency models but hadn't spoken to us about them assuming we would be uninterested. Stated that their lawyers had told them that they could only offer one model (either agency or reseller) but not both.

PRIVILEGED AND CONFIDENTIAL

January 27, 2010

AMZN-MDL-0161086
HIGHLY CONFIDENTIAL

January 21, 2010



John Sargent



Phone Call



Russ Grandinetti



PX-0482

PX-0482



Apple Enlists Publishers to Convince Other Publishers



3:07 p.m.



Brian Murray



HarperCollins



E-mail from HarperCollins
CEO Brian Murray to
Mr. Cue indicating that he
cannot do the deal with
the pricing MFN



Eddy Cue



PX-0310

From: Redmayne, Charlie
Sent: Thursday, January 21, 2010 3:30 PM
To: Murray, Brian (HarperCollins US)
Subject: Re:

Plaintiffs' Exhibit
US v Apple
1/20/10
PX-0310

Well you've pulled the pin :) - but I think this is spot on.

From: Murray, Brian (HarperCollins US)
To: Redmayne, Charlie; Hulse, Leslie; Zaffrin, Robert; Alessi, Ana Maria
Sent: Thu Jan 21 20:10:04 2010
Subject: FW:

From: Murray, Brian (HarperCollins US)
Sent: Thursday, January 21, 2010 3:07 PM
To: Eddy Cue
Subject:

Eddy,
We very much appreciate and want to support your efforts to bring ebooks to consumers on your platform. Having said that, the terms of your current proposal have widespread implications for our business, authors and trading partners, particularly as it relates to hardcover releases. If we followed your proposal we have potential for backlash from consumer, authors and current retailers. I really don't feel that I have the time I need to work through the issues on your timeline.

However, in the interest of getting a deal on your short timeline, we have two separate proposals that we can do now:

- 1) For all titles greater than three months old:
 - 30% commission
 - No MFN to catalog, usage rules or timing
 - And we'll work with you further on how to include new frontlist. I can't make promises when I haven't had time to work out the implications of your deal.

OR

- 2) For the entire catalog:
 - 10% commission on new Hardcovers
 - No MFN to catalog, usage rules or timing
 - Shorten the time period during which we need to match the lowest customer price in the marketplace to two monthsThe 10% commission solves many of the issues I have to work out.

For both, we want to be sure that there's flexibility in the pricing grid to price according to market conditions -- a surprise hit that we keep in hardcover for a long time, for example. As written it appears quite rigid. Leslie will discuss with Kevin.



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HC-DOJ-0198805

PX-0310 / 1

PX-0310



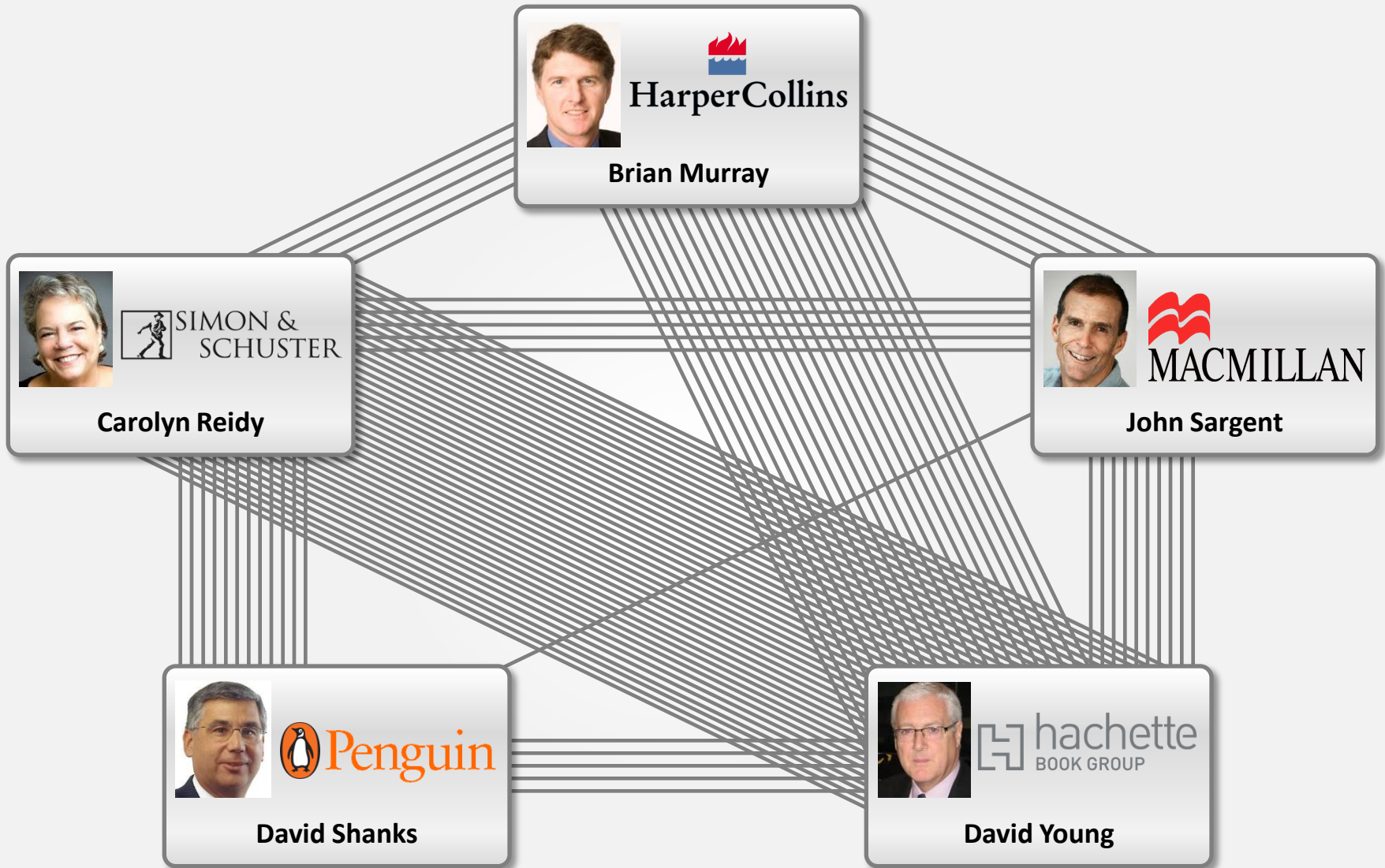


Apple Enlists Publishers to Convince Other Publishers



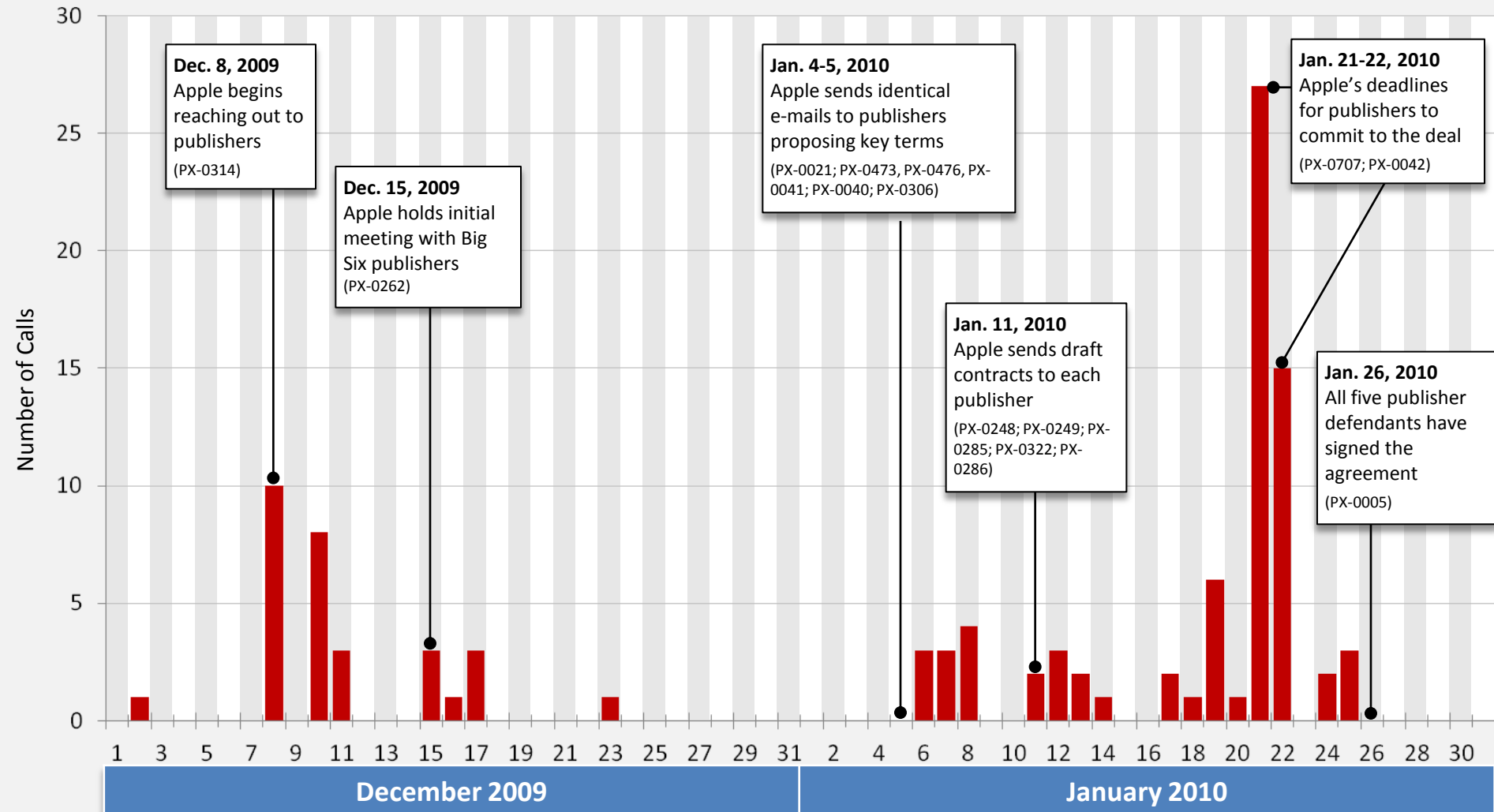


Phone Calls Between Publisher Defendant CEOs in December and January





Calls Between Publisher Defendant CEOs from December 1, 2009 to January 31, 2010





PX-0020

From: Eddy Cue <cue@apple.com>
Sent: Saturday, January 23, 2010 8:35 PM (GMT)
To: Sargent, John <John.Sargent@macmillan.com>
Subject: Re: Update

Plaintiff's Exhibit
U.S. v. Apple
12-cv-00235
PX-0020

give me a call on my cell [REDACTED]

eddy

On Jan 23, 2010, at 3:30 PM, Sargent, John wrote:



John Sargent



“Hey, do you have any more in, or still at 3?”

Eddy



Eddy Cue



“give me a call on my cell [REDACTED].”

Exhibit 40
Cue
03/13/13

K. Schroeder
csr, rpr, crrr

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pursuant to Tex. Bus. & Com. Code, Section 15.10(i)
and any other applicable state laws

MAC 0043609



PX-0029

Plaintiffs' Exhibit
US v Apple
12-cv-00226
PX-0029

Subject: Re: Announcement
From: "Eddy Cue" <cue@apple.com>
To: "Shanks, David" <david.shanks@us.penguingroup.com>
Date: Fri, 22 Jan 2010 18:54:02 +0000

Hopefully this is not an issue but if it is I will call you at 4pm. It would be a huge mistake to miss this if we have 3.



David Shanks



“My orders from London. You must have the fourth major or we can’t be in the announcement.”



Eddy Cue



“Hopefully this is not an issue but if it is I will call you at 4pm. It would be a huge mistake to miss this if we have 3.”

Exhibit 38
Cue
03/13/13
K. Schroeder
csr, rpr, ccr

Confidential

APPLEBOOK-01274664



PX-0718

Plaintiff's Exhibit
US v. Apple
134002532
PX-0718

Subject: Book Publisher Update
Date: Sat, 23 Jan 2010 16:22:27 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Message-ID: <88CADBD3-EB70-4DC6-80F9-9D1C3FC884C6@apple.com>

None were signed today though all publishers worked on them. At this point, there are no material issues with the agreements but that can obviously change until they get signed. The process is very slow because they have never done an agreement like this and given all the issues they have had with their existing partners, they want to make sure they don't make a huge mistake. In addition, all these guys use external lawyers to review what their internal ones do so it makes everything slower. I know we are way past where we should be with them getting signed, but I am pushing them really hard (even to the point of killing the deal). I hope we can get signed tomorrow because all of them at this point are really close. In my mind, I have an absolute drop-dead of Mon!

â's **Simon & Schuster**

We have gone through two red lines today. We expect their final version late tonight. I have also talked to the CEO, Carolyn, several times today and there are no issues.

â's **Penguin**

No change here, he is waiting for the others to sign. We have executables ready to sign but he wants an assurance that he is 1 of 4 before signing (not in the contract).

â's **MacMillan**

We just got a redline from them so we are about to go through it. I also talked to the CEO, John, several times today and there are no issues.

â's **Hachette**

Got the redline at noon and just finished a face to face meeting. Both sides believe we are done so we are sending a clean version by late tonight to the CEO. He will have a call with France in the morning.

X **Harper Collins**

I reached out to him and told him we had 4 done and he should really re-consider. Here was his response -

Congratulations. You've accomplished a lot in a week or two.
I will discuss with my team tomorrow. I can't promise that anything will change.
Is four out of six enough for you to launch the store? I'd assume so.

I am not going to answer him since they are not signed yet, but maybe he will change his mind with the news and Murdoch pushing.

X **Random House**

No conversations are occurring but will try one more time when i have 4 signatures in hand.

--- Eddy

“Penguin

No change here, he is waiting for the others to sign. We have executables ready to sign but he wants an assurance that he is 1 of 4 before signing (not in the contract).”



DX-239

Subject: Book Publisher Update
Date: Sun, 24 Jan 2010 21:50:27 -0800
From: Eddy Cue <cue@apple.com>
To: Steve Jobs <sjobs@apple.com>
Bcc: Keith Moerer <kmoerer@apple.com>, Kevin Saul <ksaul@apple.com>
Message-ID: <439D6117-ECA9-4FC2-9379-25865C1594B6@apple.com>

I signed, 3 to go.... TOMORROW IS BIG DAY!!!

â's Hachette
Signed.

Simon & Schuster
We are scheduled to sign at 10am tomorrow at their offices.

MacMillan
We are scheduled to sign at noon tomorrow at their offices.

Penguin
Once previous two are signed, I will head to their offices to get this one signed.

X Harper Collins
I got a call from Jonathan Miller asking me my thoughts because he had to James Murdoch. I have educated him and he said James and him are getting together with Rupert tomorrow to discuss. Jonathan will call me after his meeting. In the meantime, their book CEO, Brian Murray, sent me a proposal that actually got worse than the previous I told him to send. I actually think he is idiot. I'm guessing he is reaching out because of pressure from James.

X Random House
No conversations are occurring.

--- Eddy

----- end message -----

“Penguin
Once previous two are signed, I
will head to their offices to get this
one signed.”



PX-0032

From: Steve Jobs <sjobs@apple.com>
To: Eddy Cue <cue@apple.com>
Subject: Fwd: HarperCollins
Received(Date): Sun, 24 Jan 2010 22:31:31 -0800

Plaintiff's Exhibit
TX v Apple
12-cv-05038
PX-0032

My last email to James Murdock.

Sent from my iPhone

Begin forwarded message:

From: Steve Jobs <sjobs@apple.com>
Date: January 24, 2010 11:31:24 AM PST
To: James Murdoch <jrm@newsint.co.uk>
Cc: Steve Jobs <sjobs@apple.com>
Subject: Re: HarperCollins

James,

Our proposal does set the upper limit for ebook retail pricing based on the hardcover price of each book. The reason we are doing this is that, with our experience selling a lot of content online, we simply don't think the ebook market can be successful with pricing higher than \$12.99 or \$14.99. Heck, Amazon is selling these books at \$9.99, and who knows, maybe they are right and we will fail even at \$12.99. But we're willing to try at the prices we've proposed. We are not willing to try at higher prices because we are pretty sure we'll all fail.

As I see it, HC has the following choices:

1. Throw in with Apple and see if we can all make a go of this to create a real mainstream ebooks market at \$12.99 and \$14.99.
2. Keep going with Amazon at \$9.99. You will make a bit more money in the short term, but in the medium term Amazon will tell you they will be paying you 70% of \$9.99. They have shareholders too.
3. Hold back your books from Amazon. Without a way for customers to buy your ebooks, they will steal them. This will be the start of piracy and once started there will be no stopping it. Trust me, I've seen this happen with my own eyes.

Maybe I'm missing something, but I don't see any other alternatives. Do you?

Regards,
Steve

Exhibit 45
Cue
03/13/13

K. Schroeder
csr. rnr. ccr

lightly Confidential

APLEBOOK-03345078

“Throw in with Apple and see if we can all make a go of this to create a real mainstream ebooks market at \$12.99 and \$14.99.”





iPad Launches with Best-Selling e-Books at \$14.99





Amazon Prices Its Best Sellers at \$9.99



http://www.amazon.com/True-Compass-A-Memoir-ebook/dp/B002ZL3BNA Go

12 captures
1 Jan 10 - 14 Jun 12

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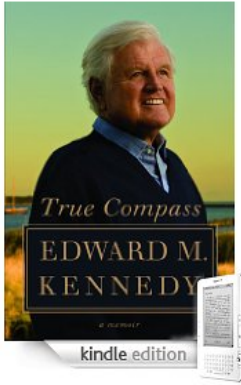
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PX-0607

From: Reidy, Carolyn <Carolyn.Reidy@Simonandschuster.com>
Sent: Friday, January 29, 2010 9:43 PM
To: Rivlin, Elisa <Elisa.Rivlin@Simonandschuster.com>
Subject: Re: Privileged and Confidential: Apple

Plaintiff - Exhibit
US v Apple
12-cv-02028
PX-0607

Yeah, right.

From: Rivlin, Elisa
To: Reidy, Carolyn; Rothberg, Adam
Sent: Friday, January 29, 2010 10:00:30 AM

Further to our own reports on how publishers hope/expect to the deploy the agency model of selling terms broadly across their ebook accounts to retake some measure of control over the pricing of new releases, Apple's Steve Jobs essentially confirmed the plan to the WSJ's Walt Mossberg in a brief video interview.

Mossberg wondered why someone "should buy a [b]book for \$14.99 when you can buy one from Amazon for \$9.99 on the Kindle or Barnes & Noble?" A confident Jobs replies, "That won't be the case.... The prices will be the same." How in the world will prices be the same? Because if you want to carry brand-new ebook releases, you will carry on the publishers' new selling terms. Or as Steve puts it, "publishers will actually withhold their [e]books from Amazon...because they are not happy with the price."

CONFIDENTIALITY NOTICE:

“Mossberg wondered why someone ‘should buy a [b]book for \$14.99 when you can buy one from Amazon for \$9.99 on the Kindle or Barnes & Noble?’ A confident Jobs replies, ‘That won’t be the case.... The prices will be the same.’”

Subject: RE: Apple

Yes, he did say it. Have gotten one minor blog query, which I have so far not answered, so far that□s all, but I expect more□

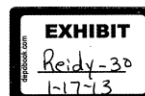
“I cannot believe that Jobs made the statement below. Incredibly stupid.”

From: Rivlin, Elisa
Sent: Friday, January 29, 2010 12:38 PM
To: Reidy, Carolyn
Cc: Rothberg, Adam
Subject: Apple

I cannot believe that Jobs made the statement below. Incredibly stupid.

Steve Jobs Makes It Quite Clear How This Will Work

CONFIDENTIAL



SS00032637

CONFIDENTIAL

SS00032638



PX-0053

Plaintiff's Exhibit
US v Apple
Doc#026
PX-0053

Subject: Re: URGENT!!

Subject: Re: URGENT!!

2010 15:52:35 -0800
ecue@apple.com>
" <john.sargent@macmillan.com>
CE876-1C6F-4F03-9E17-886E0D65EB5F@apple.com>

I just tried. Call me on my cell [REDACTED]

Sent from my iPhone



John Sargent



Hi Eddy. I am gonna need to figure out our final agency terms of sale tonight. Can you call me please?



Eddy Cue



"I just tried. Call me on my cell [REDACTED]."

K. Schroeder
cc: me, rrr

Confidential

APPLEBOOK-00012609

PX-0053 / 1

PX-0053





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Amazon started they 1 So be to wit the ag the cu we als

Jobs was particularly interested in striking a deal with the *New York Times*, which he felt was a great newspaper in danger of declining because it had not figured out how to charge for digital content. "One of

“But we also asked for a guarantee that if anybody else is selling the books cheaper than we are, then we can sell them at the lower price too. So they went to Amazon and said, ‘You’re going to sign an agency contract or we’re not going to give you the books.’”



PX-0284

Subject: Re: Amazon

Plaintiffs' Exhibit
US v Apple
Exhibit 224
PX-0284



David Shanks



“I wanted to tell you before you read it on line that we have finally reached an agreement with Amazon on our new terms of sale....The playing field is now level.”

* * *

“Please keep this to yourself until the announcement.”



Eddy Cue



“Great news and congratulations!!!”

Confidential

PX-0284 / 1

PX-0284

APPLEBOOK-00015074

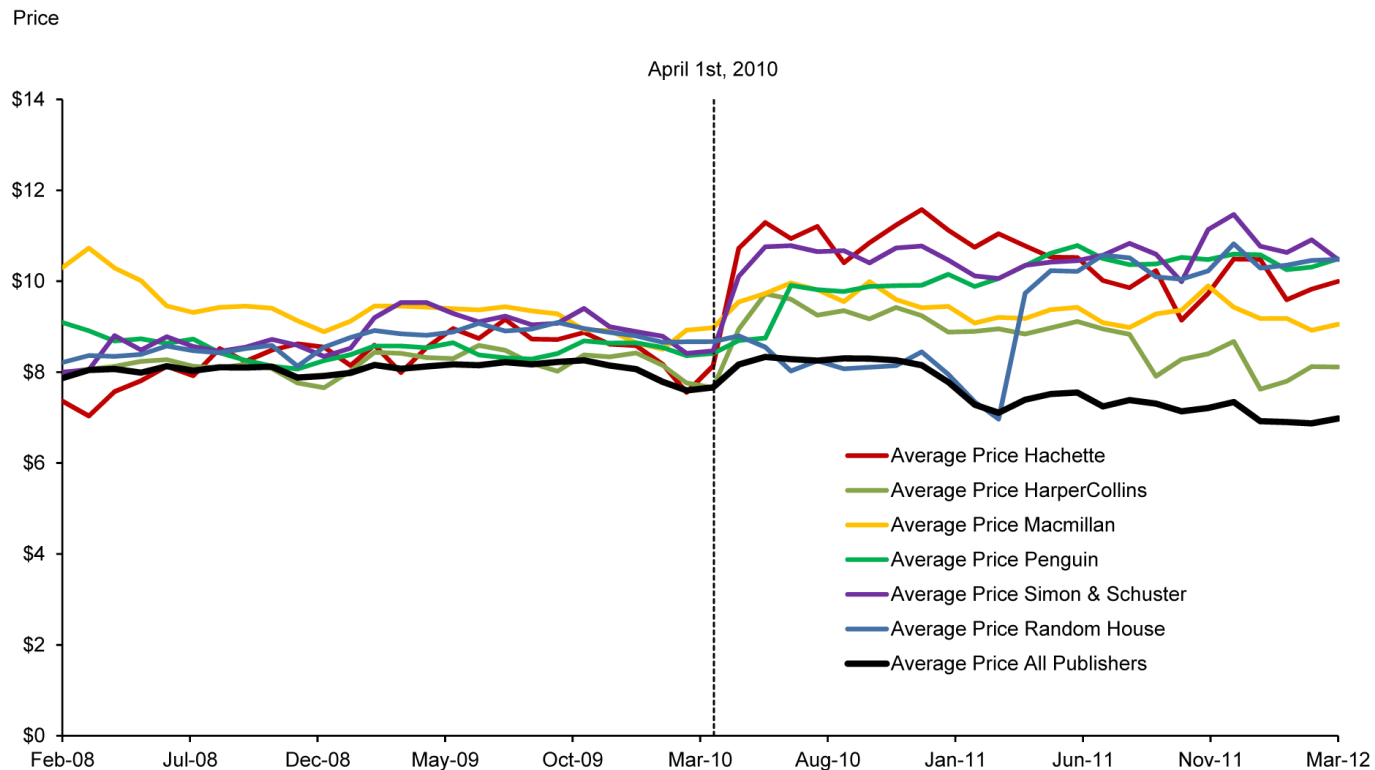




DX-434

CONTAINS MATERIAL DESIGNATED AS HIGHLY CONFIDENTIAL PER PROTECTIVE ORDER

Average eBook Retail Prices for Sony, Amazon, Barnes & Noble, Apple, Google, Books-A-Million, and Kobo February 2008 – March 2012



Source: Sony Transactions Data, Amazon Transactions Data, Barnes & Noble Transactions Data, Apple Transactions Data, Google Transactions Data, Books-A-Million Transactions Data, Kobo Transactions Data



PX-0542

“The other point that came out of the conversation was [REDACTED] view that Indigo and the major publishers all have a massive stake in ensuring that the success of the physical book as a format continues (they are not making money out of ebook sales in the present price wars with Amazon) and that [REDACTED] would welcome a combined meeting on how we might achieve this in Canada.”

We would never meet with Barnes and all our competitors. The Government would be all over that. We would meet separately with Indigo being the facilitator and go between. That is how we worked with Apple and the government is still looking into that.

From: Bryan, Mike



David Shanks

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The other point that came out of the conversation was [REDACTED] view that Indigo and the major publishers all have a massive stake in ensuring that the success of the physical book as a format continues (they are not making money out of ebook sales in the present price wars with Amazon) and that [REDACTED] would welcome a combined meeting on how we might achieve this in Canada. It was suggested that Rob might call such a meeting.

How do we feel about this? Is this the sort of meeting that might happen with B&N? Would we welcome a broad forum with Indigo with our competitors?

Highly Confidential

PEN-LIT-00199145

PX-0542 / 1

PX-0542

